2002 Report on Trends in the State Courts

with an Environmental Scan by NCSC and Futurist.com

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Introduction

Courts are not immune from the events and forces that change the world. Court leaders acknowledge the importance of being aware of trends but commonly have little time and few resources devoted to their study. Recognizing courts' difficulties in this area, the National Center for State Courts understands its mission to include helping courts to anticipate and manage change so as to better serve the public. One way that the National Center has long served this purpose is by publishing an annual *Report on Trends in the State Courts*, a document that profiles recent issues and developments of varying degrees of maturity, explains how these may be relevant to the courts, and presents examples of how courts might deal with them. Although the *Trends Report* remains one of the National Center's most popular products, it is, by itself, inadequate to support the courts' needs in the area of futures studies and strategic planning, being too nearsighted for use by planners in forecasting and not offering comprehensive instruction for how best to anticipate and manage change. The courts need more.

Beginning with this edition, the *Trends Report* becomes part of a broader and deeper commitment by the National Center to support courts with efforts involving court futures and strategic planning. New publications and new educational offerings will extend the horizon for those studying what the future may hold and provide instruction for how courts may better shape and meet that future. One of these new publications is *An Environmental Scan for the State Courts, 2002*, prepared by the National Center's Knowledge and Information Services Office and Glenn Hiemstra of Futurist.com. Like the *Trends Report*, this new publication attempts to identify events, trends, and developments, or drivers, shaping the future; however, the new publication looks further into the future and seeks to avoid focusing too narrowly on what has immediate relevance to the justice system. In recognition that the contents of *An Environmental Scan* may at first seem too "far out" or alien for some in the justice community, the new role for the articles of the *Trends Report* is to complement the scan by demonstrating the relevance of selected ideas or issues, elaborating upon developments that are related to the scan but of more immediate import to the courts. The two publications are linked online and have been published together in print.

At the close of 2002, long-term global patterns include continuing migrations of workers and their dependents from developing nations into the world's industrialized nations; mounting concerns about pollution and environmental degradation; and proliferating trade agreements linking world economies. More immediately, most nations are experiencing an economic slump; within the United States, governments at all levels are concerned about the adequacy of their budgets to continue basic operations and special programs. The United States remains preoccupied with issues of homeland security and with the dangers of global terrorism and proliferating weapons of mass destruction. Federal initiatives emphasize linking the resources of agencies concerned with public safety and law enforcement. Technologies continue to advance, offering unprecedented abilities for accessing and sharing information, identifying individuals, and doing business but at the same time raising concerns about privacy rights and the vulnerability of records. The influence of these forces upon the state courts is neither uniform nor universal, but the forces of change are real. For some courts, there are opportunities; for others, threats. Within this edition of the *Trends Report*, the National Center offers its latest take on what is happening and what the courts should know.

NOTE: All the articles in this edition of the *Trends Report* are available online on the National Center for State Courts' Web site: www.ncsconline.org. The online versions contain links to many of the resources cited in the articles, and a URL is posted at the beginning of each article in this printed version.

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Trends

Introduction to Biometrics, or "Have Finger/Face/Hand/Voice, Will Travel"

J. Douglas Walker

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_SciEvd_Trends02_Pub.pdf

Who are you? Are you who you claim to be? These are two fundamental questions that we encounter more and more frequently in our daily routines as we interact with an increasingly impersonal world. Rather than dealing with local bank tellers, corner merchants, familiar building guards, and face-to-face transactions, we bank through ATMs and the Internet, shop through electronic Internet storefronts, and enter buildings secured by electronic locks. At each of these transactional points, we have to prove our authorization for the desired access or activity; for most we must also authenticate our identity. In the wake of rising identity theft, credit card fraud, and security threats brought painfully to our attention by the events of September 11, more robust methods for proving identity and authorization are being demanded.

Biometrics Defined

Three basic techniques exist for individual authentication, all involving your ability to supply "something you know," "something you have," or "something you are." Passwords and PINs are examples of the first technique; access cards and keys (whether physical or cryptographic) are examples of the second. Biometrics deals with the third technique.

The term "biometrics" is generally used today to describe the science, techniques, and technologies concerned with measuring and analyzing human physiological or behavioral characteristics, especially for recognizing or authenticating individuals. Biometrics usually involves automated methods to capture information about these characteristics and use it for future comparison to establish or confirm identity. Biometrics depends upon the uniqueness of physiological factors for different persons. The combination of hardware, software, and procedures needed to collect, store, distribute, and process biometric data and then perform the subsequent comparison and authentication is usually referred to as a "biometric system."

Types of Biometrics

What sorts of physiological characteristics are being measured for these purposes? The leading biometrics technologies include fingerprints, eye scans (iris or retinal), facial recognition, hand geometry, and voice (speaker) recognition. Each of these has inherent strengths and weaknesses when evaluated on the basis of accuracy, cost, user acceptance, size, and other factors. Because the biometrics industry is advancing rapidly, the relative position of different techniques on these scales is constantly changing. In addition, different techniques are best suited for different types of applications. Some biometric systems use a combination of two or more types of biometric measures to improve their effectiveness. The fastest-growing segment of the security industry is centered on the use of biometrics in combination with "smart cards" that contain an embedded chip capable of storing data about the cardholder and processing that data in conjunction with external devices and application systems. The biometric data ensure that the cardholder is the rightful owner.

Basic Processes

Regardless of the type of biometric system employed, there are three basic steps or processes involved.

- ***Enrollment*** is the process of capturing initial biometric data for a known individual to create a template and then storing that template in a database along with other information linking the individual to an organization, an account, or a level of authorization. For exam-

ple, you might be asked to say selected phrases aloud as part of the registration process for telephone access to your financial records in a mutual fund plan.

- ***Verification*** is the process of performing a one-to-one match of a presented biometric sample against a previously stored template for the individual whose identity is being claimed. In the above example, when you later want to check your fund balance, you might be required to repeat one of the phrases to verify your identity to the system after punching in your account code. The system digitizes the new sample and compares its characteristics with those of the template stored in your record corresponding with the same phrase.
- ***Identification*** is the process of comparing a biometric sample against an entire collection or specific subset of the collection in an effort to find a possible match to establish an identity for the person whose sample was presented. Unlike verification, in this process there is no claimed identity, and a one-to-many match is conducted using powerful database searching algorithms. Checking the fingerprints left behind at a crime scene by an unknown perpetrator is a common example. A growing practice is the use of facial recognition systems for video surveillance at airports and other critical locations, where the hope is to spot any terrorists or criminal suspects. As each face comes into range, it is compared against facial templates stored in a database of known suspects.

Issues and Trends

There certainly are controversial issues surrounding the use of biometrics, some hotly debated and others of only minor concern to most observers. Perhaps the most deeply felt issues are those of privacy and freedom. How much of each are we willing to surrender in exchange for greater security or improved law enforcement? Some feel that using biometrics and smart cards opens the door to a "Big Brother" society where our every move can be tracked by government. Others believe that biometrics and smart cards can provide security while preserving privacy through their ability to limit what types of personal data can be revealed to a given authority for a given application or purpose. For example, you may now have to show your driver's license—containing information about your age, address, phone number, and visual impairments—to a store clerk to have your check (or even your credit card) accepted. A smart card with biometric verifier, by contrast, might reveal only that you are the individual you claim to be and have a valid checking account.

Other issues include the cost and implementation complexity of various approaches, degree of user acceptance (e.g., routinely presenting a fingertip to a scanner might be acceptable, while submitting to a retinal scan might not), and reliability and accuracy of a biometric system. Two aspects of accuracy are important to consider: "false acceptance," in which an unauthorized individual is mistakenly authenticated by the system, and "false rejection," in which a valid individual is denied access or approval. Although higher-powered (and higher-priced) systems generally provide better performance on both scales, each application must be properly tuned to compromise in the least damaging direction. For example, it would be better to mistakenly flag a few faces as potential terrorists (false acceptance) and subsequently have a human agent view and compare them than to fail to recognize an actual match (false rejection). On the other hand, occasionally inconveniencing a pilot by requiring a second or third glance into the iris scanner (false rejection) is far preferable to setting a low threshold that might admit a terrorist into the cockpit (false acceptance).

The growth of the fledgling biometrics industry and the adoption of biometric technologies by government and private enterprise are both accelerating rapidly. Propelled by heightened security requirements, improving technology, evolving standards, and sharply falling prices, biometric solutions are coming along fast and furiously. Consider some of these developments:

- By the end of next year, the Department of Defense (DOD) plans to have all workers use either iris or fingerprint scanning to gain access to their facilities.
- By 2005 DOD's aggressive plan calls for biometrics to be incorporated into a common access card (smart card) carried by all active-duty and civilian personnel across all branches of service.
- Several acts have been passed by Congress and signed into law in the last two years requiring the establishment of technologies, specifically including biometrics, to secure our borders and authenticate both travelers and transportation workers.
- The Transportation Security Administration (TSA) has issued a request for white papers on proposed solutions for a Transportation Worker Identification Credential system employing biometrics and smart card technology. TSA also is planning two biometric/smart card pilot projects this year.
- Fidelity Investments is planning to use voice recognition to authenticate its customers conducting telephone transactions and is pilot testing the technology.

- MasterCard has been experimenting with biometrics for building access since 1995 and is looking at converting its credit cards to use biometrics.

Applicability to Courts and the Justice System

There are several potential applications for biometric systems in courts. Certainly, there is increasing concern for courthouse and courtroom security. Biometrics systems can help ensure that judges and other authorized staff have easy, convenient access to certain corridors, rooms, or sections of a building that are secured with electronic locks to prevent unauthorized entry. Forgotten access codes and either deliberate or inadvertent disclosure of PINs and universal codes become a nonissue when access is granted or denied on the basis of a fingertip, voice, or iris pattern. Similarly, we can protect court information systems by requiring users to present the appropriate biometric proof of their identity and level of authorization when logging in or accessing certain system functions. Low-cost fingerprint scanners, speaker recognition systems, and other biometrics-based components designed for personal computers are making this approach feasible.

Beyond such typical—though very important—applications, however, biometrics offers a solution to a long-standing problem in criminal justice information systems: how to establish positive identification for the purpose of court records. The crux of that problem is how to match court dispositions to arrest or other initiating records in law enforcement systems to ensure that the dispositions can be reported to and accepted by criminal history repositories. Law enforcement generally relies on fingerprints to establish identity; courts generally do not. When a defendant has been found guilty of criminal charges, it often is difficult to know with certainty that the individual standing before the court at sentencing is the same person originally arrested by the law enforcement agency and charged with the crime. The problem is compounded when the individual did not come through the normal arrest and booking process. Consequently, because criminal history repositories adhere to a strict acceptance criteria, many court dispositions are not reported. Yet this essential criminal justice asset is often critical in issuing gun permits, approving professional licenses, and conducting employee background checks for certain positions.

The problem of positive identification in courts is even more pervasive than disposition reporting statistics might indicate. Urban courts are experiencing more frequent incidences of identity swapping among offenders (e.g., among gangs, family members, and even strangers in jail) for offenses ranging from traffic tickets to felonies, often resulting in repeat offenders going free. One has only to imagine a known or suspected terrorist picked up on a routine traffic offense slipping through the system undetected to envision a far more serious potential consequence. On the other side of the coin, establishing positive identification can help reduce the occasional but highly undesirable case of mistaken identity involving a completely innocent party. In these days of instant publicity and online court records, this advantage is significant.

Relatively low-cost biometrics systems can help empower courts to track offenders all the way through the criminal justice process with almost negligible effect on normal procedures. Through proper application, undetermined or mistaken identity—whether accidental or intentional—could be virtually eliminated. When integrated with case management systems, a secondary benefit could be improved automated record retrieval and data entry. Finally, if biometrics technologies are used also (when appropriate) to establish the identity of the individual at the other end of an Internet connection, courts can more freely expand the types of remote interactions they permit and the range of electronic services they provide.

Many courts are taking a close look at biometrics technologies as a possible solution to their need for reliable methods for authentication and identification of individuals. Will you soon encounter biometrics technologies in your local courthouse? For the safety of our judges, court staffs, and general public as well as the improved effectiveness of the criminal justice systems, perhaps we should hope so!

Diversity in the Courts

Madelynn M. Herman

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_RacEth_Trends02_Pub.pdf

Diversity in Transition

Businesses have realized that hiring a diverse staff helps them respond with more insight and sensitivity to a variety of markets, both foreign and domestic, in an increasingly global economy. Diversity initiatives have been embraced, and inroads have been made in the business community, but there is still a long way to go. An effort to keep up with the increasing diversity of our population has become a great challenge for the courts, also. Many courts are realizing that they can better serve their customers as well as enhance the credibility of the justice system if their staff more closely represents the diversity of the customers they serve.

Diversity in the courts is not new. The range of how courts are addressing this issue goes from setting up task forces and commissions to study and address the issue to implementing statewide policies and initiatives. The concept of what diversity is and how it is being addressed is changing. In some courts and organizations, the definition of diversity has expanded. Diversity training is being standardized and conducted on an ongoing basis, diversity policies are in place, mentoring programs are being established, and court leaders are increasingly recognizing the importance of diversity in their organizations.

Many courts and organizations are attempting to increase the number of minority staff. Diversity in hiring used to be about race, ethnicity, and gender. Diversity definitions can now include persons with disabilities, different sexual orientations, and working mothers. Age, education, and religious differences can also be included. Some forward-thinking organizations include intellectual diversity, as well. Many initiatives now incorporate these new definitions of diversity.

Progress on Addressing Diversity in the Courts

Increasing the diversity of court staff is not an exact science, but progress is being made:

- In 1997 there were 2,879 minority judges serving on the U.S. federal and state courts. In 2001 the number of minority judges increased by 402 to 3,281.[1]
- In 1985, 7 percent (or 72 out of 1,042) of the justices serving on state appellate courts were women. In 2001 the number had increased to 23 percent (or 287 out of 1,262).[2]
- From the founding four member states (New Jersey, New York, Michigan, and Washington) in 1988, the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts has grown to its current membership of 28 states and the District of Columbia, as well as various state and national bar associations. Canada and Puerto Rico are also members.
- From the four founding member states (Minnesota, New Jersey, Oregon, and Washington) in 1994, the National Consortium for State Court Interpreter Certification has grown to its current membership of 29 states.

[1] *The Directory of Minority Judges of the United States,* second and third editions (Chicago: American Bar Association, 1997 and 2001).

[2] "Women Justices Serving on State Appellate Courts, 1998" (Williamsburg, VA: National Center for State Courts, 2000.)

- In December 2001 the Conference of State Court Administrators issued a position paper on "The State Courts' Responsibility to Address Issues of Racial and Ethnic Fairness."

Best Practices in Achieving Staff Diversity

The following is a list of best practices to keep in mind when you embark on a diversity initiative in your court or organization:

- **Define Diversity.** The definition of diversity varies greatly. Diversity does not just refer to race, gender, and national origin, but also to age, socioeconomic levels, religions differences and practices, language, and sexual orientation. An organization must determine the type of diversity it is seeking.
- **Leadership Commitment to Diversity**. A commitment to diversity must come from the top, must be communicated to all employees, and must be an ongoing effort. An organization must value diversity and embrace the belief that minorities bring certain perspectives to the organization that the employer would not otherwise have. If top management doesn't wholeheartedly embrace diversity, empty gestures will backfire. Organizational goals should reflect a commitment to diversity. At least one person should be identified to carry out the organization's diversity initiative.
- **Effective Recruitment and Hiring Practices**. Establish effective recruitment, hiring, and promotion practices that include qualified minorities and women. This may involve placing ads in ethnic or foreign-language newspapers, accessing minority databases, approaching minority colleges, or contacting minority professional associations. Develop culturally diverse interview panels and make sure that everyone is asked the same questions.
- **Retain Staff and Maintain a Diverse Workforce**. Develop mentoring programs so that everyone has an opportunity to succeed. Encourage mentors to works with staff of different races and genders, as well as from different classifications within the organization.
- **Establish and Implement Effective Complaint Policies and Procedures**. All complaints should be taken seriously, with prompt remedial action. Make sure that no retaliation will be brought against the person who has brought the complaint.
- **Provide Training Opportunities**. Train court personnel and judges in what is expected of them in terms of discriminatory activities. Conduct diversity training on a regular basis to reinforce your commitment to diversity.
- **Evaluate compensation systems**. Standardize pay, fringe benefits, and perks.
- **Measure Progress and Results**. Have a system to ensure accountability. Make sure that managers are accountable and rewarded for quality diversity initiatives.[3]

Highlighted Diversity Programs and Initiatives in the Courts

Indiana. The Indiana Court of Appeals created a program to make minority law students more aware of the possibility of judicial positions both as law clerks and as judges. The eight-week summer program involved hiring five minority law students to perform clerking duties and participate in field trips to prisons, criminal courts, and workers' compensation hearings.[4]

More recent initiatives in Indiana include the supreme court-sponsored Indiana Conference on Legal Education Opportunity (ICLEO), where a more diverse legal profession is being created. Established in 1997, and patterned after the national CLEO program, ICLEO provides $5,000 annual stipends to Indiana law school students who are educationally disadvantaged, are members of a minority, or have low incomes.[5]

Nebraska's Minority and Justice Task Force is a combined effort of the Nebraska Supreme Court and the Nebraska State Bar Association to analyze the problems minorities encounter in the court and legal profession. The project will examine issues of racial and ethnic fairness within four major areas: personnel and employment practices within the courts; access to the courts; civil, criminal, and juvenile justice; and the legal profession.

In an attempt to gather evidence indicating that minorities are not proportionately represented in Nebraska's judiciary and court staff, in the spring of 2002, Nebraska's Minority and Justice Task Force surveyed the membership of the Nebraska State Bar Association and the Nebraska Court and Probation employees. This project will assess the representation of minorities in Nebraska's legal system, as well as equal opportunity policies and affirmative action

[3] Adapted in part from Jeffrey Ghannam, "Making Diversity Work," *ABA Journal* (March 2001), as well as comments from Jacqueline McNair at the Thirteenth Annual Meeting for the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts, May 10-12, 2001, Orlando, Florida.

[4] Dave Remondini, "Indiana Creates Program to Steer Minority Students to the Bench," National Law Journal (February 20, 1995).

[5] "Summary of State and Local Justice Improvement Activities—2001," (Chicago: American Bar Association, 2001-2002).

plans concerning employee training, recruitment, qualification barriers, retention, and promotion. The prevalence of discriminatory complaints and complaint procedures also will be examined.[6]

New Jersey is considered a leader when it comes to addressing minority concerns and increasing diversity throughout the court system. They have seen a steady increase in the number of minorities and women employed in the courts over the last ten years. More minority law clerks are being hired, and staff interpreters are available in most courts.

For further information on New Jersey's diversity programs, see the online article in the NCSC Court Information Database by Theodore J. Fetter titled, **"**New Jersey's Program to Build and Develop a Diverse Workforce."

New York. The New York Unified Court System's Workforce Diversity Program was first implemented in 1989. The primary goal of this program continues to be the elimination of underrepresentation and the achievement of a diverse workforce. New York also has a number of training initiatives in the court system, such as "Cultural Sensitivity Training for Managers and Supervisors" and "Supervisory Skills for Bias-Free Environment for all Managers and Supervisors." All new employees, including nonjudicial employees, attend an orientation program that includes a component on diversity and EEO in the court system's policies and procedures.

Oregon has been very active with diversity initiatives in the state's courts. The Oregon Judicial Department (OJD) Personnel Division is working on numerous initiatives to increase workforce diversity. Some of these initiatives include creating a bilingual differential for qualified staff members assigned bilingual customer service responsibilities; adding an item on minority utilization to the courts' authorization form for new hires; featuring a component in supervisory training that addresses AA/EEO; and adding a chapter to the OJD Recruitment and Selection Manual on increasing workforce diversity.

The OJD has also included diversity issues in education for new judges for the last several years. The Citizen Review Board is diversifying its membership through targeted outreach in minority communities. The Oregon Judicial Conference's Judicial Education Committee (JEC) has adopted a policy to incorporate fairness issues into all substantive judicial education programs. The OJD Access to Justice for All Committee also plans to work with the Oregon State Bar to increase the number of education programs qualifying for the diversity credit.

Oregon Chief Justice Wallace P. Carson, Jr., serves on the Oregon Cultural Competency and Workforce Diversity Council. Oregon's Department of Administrative Services created this council to develop, coordinate, and put in place a statewide strategy for the implementation of policies, action plans, guidelines, and practices for cultural competency and workforce diversity within all state agencies, departments, and commissions.[7]

Washington. The Workforce Diversity Sub-Committee of the Washington State Minority and Justice Commission has expanded the externship programs of the University of Washington School of Law and the Seattle University School of Law. The goals in expanding the law school externship programs were to provide quality, "hands-on," real-world professional experience for law students, especially students of color, thereby increasing the chances of their choosing a career path within the courts.[8]

Conclusion

The lack of diversity of court staff affects not only the workforce, but also the public's view of the legal system. Minority underrepresentation could also impact the basic rights of minorities due to a lack of sensitivity to racial biases. With our country's population continuing to become more diverse, it is vital that diversity issues be addressed on a continuing basis.

Addressing diversity issues goes way beyond getting people in the door. Hiring a diverse workforce is still important, but courts and organizations are recognizing that diversity is not only about numbers. It's also about allowing diverse people to learn from each other and breaking down barriers between employees of different levels and backgrounds. The success of any diversity initiative depends on the value that an employer places on diversity. Expressing a commitment to diversity is the easy part—making it happen is the challenge.

[6] First Statewide Conference on Race and Ethnic Bias in the Courts, April 17-20, 2002, San Francisco.

[7] Court2Court listserv response from Debra Cohen Maryanov, Access to Justice Coordinator, Oregon Judicial Department, on October 22, 2002.

[8] Ibid.

RESOURCES

See Herman, Madelynn. "Diversity Resource Guide." National Center for State Courts, Knowledge and Information Services, 2002. This online resource guide will provide you with numerous information and resources on diversity in the courts, best practices in diversity, and diversity in general.

The Death Penalty

Holly Shaver Bryant

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_CapPun_Trends02_Pub.pdf

Issues surrounding the administration of the death penalty continue to engage the states' attention on several fronts. New developments have occurred in moratorium efforts; states have increasingly focused on setting standards for capital attorneys and judges hearing capital cases; and recent Supreme Court case law affects state sentencing standards and procedures.

Moratorium Efforts

In Illinois, a two-year moratorium on executions begun in 2000 led to the release in April of a comprehensive report by the Governor's Commission on Capital Punishment. The commission examined not only the cases of the 13 death row inmates released due to invalidation of their convictions, but also scrutinized all reported death penalty cases in the state. The commission's report identifies multiple flaws in the state's justice system at large, as well as in its capital system in particular, and recommends extensive reforms to address those problems. Notable among the recommendations for their controversial character are requiring the videotaping of all questioning by police of capital defendants; elimination of the current set of circumstances under which a defendant can be eligible for the death penalty in favor of a simpler and narrower group of criteria; review by a statewide commission of all prosecutors' decisions to seek the death penalty; intensified scrutiny of testimony by in-custody informants; and increased funding for training trial lawyers and judges in capital cases.

Since the report's release, Illinois governor George Ryan has announced both his intention not to seek reelection and his willingness to entertain clemency petitions from the state's 159 current death row inmates. In response, defense attorneys have coordinated clemency petitions for all these inmates. On October 13, 2002, the Illinois Prisoner Review Board opened nine days of hearings on 142 clemency petitions. The board will make confidential and nonbinding recommendations concerning each of the petitions to the governor, who has final authority to grant or withhold clemency. In evaluating each of the cases, the governor has committed himself to measuring the convictions against the reform standards set forth in the commission report.

Governor Parris Glendening announced his intention on May 9, 2002, to impose a moratorium on executions in Maryland pending the release of a University of Maryland report examining that state's death penalty. The governor will impose stays on all executions scheduled for the period before the release of the report, now planned for December 31, 2002. In a statement released by his press office in May, Governor Glendening stated, "We must have absolute confidence in the integrity of the process. I envision the stay remaining in place until the study is reviewed and acted upon by the legislature, which I expect to take about one year. The next governor will have the authority to adjust that timetable." The study is being spearheaded by University of Maryland, College Park, professor Ray Paternoster, a criminologist and statistician. The study focuses primarily on racial influences in death penalty cases, but, among other questions, it will also examine whether prosecutors in different localities seek the death penalty unequally. Maryland's governor-elect Robert Ehrlich has indicated he will consider lifting the moratorium when he takes office. Maryland has executed only three individuals since 1977 and currently has 16 people on death row.

Standards Setting for Capital Counsel

An ever-increasing tension between the federal government and the states became more pronounced over the last year in the arena of capital defense representation. As the Supreme Court refused to find that petitioners in two high-profile

habeas corpus cases—*Mickens v. Taylor,* a case arising in Virginia, and *Bell v. Cone,* a case from Tennessee—received ineffective assistance of counsel in their capital trials, several of the states moved to tighten their standards for the appointment, training, and compensation of capital counsel. These rulemaking changes suggest there is a widespread groundswell of dissatisfaction with the perceived fairness of death penalty trials despite the very limited chance that defendants will obtain a reversal on grounds of ineffective assistance. The National Center for State Courts has recently posted on its online Court Information Database (www.ncsconline.org) a resource guide devoted to capital counsel and death penalty representation.

Illinois

Though less publicized than the efforts of Governor Ryan and the Governor's Commission on Capital Punishment in Illinois, the Illinois Supreme Court has also been working diligently to improve the administration of the death penalty in the state. The court appointed a Special Committee on Capital Cases in April 1999 to assess death penalty administration. In response to the work of the special committee, the court on March 1, 2001, filed new rules for death penalty cases. Among the new requirements is that all attorneys—including all defense counsel and assistant prosecutors—in death penalty cases be certified as members of the new Capital Litigation Trial Bar and that all judges who preside over death penalty cases attend a Capital Litigation Seminar. These two rules became effective in 2002. Membership in the Capital Litigation Trial Bar is governed by admissions committees whose members are experienced capital litigators. In cases where counsel is appointed, two members of the Capital Litigation Trial Bar must be appointed to represent a capital defendant. Other notable new rules are the extension of criminal discovery rules to sentencing hearings in capital cases; a time limit within which the state must give notice of its intention to seek the death penalty or forfeit the opportunity to do so; the authorization of discovery depositions of witnesses; standardized disclosure rules for DNA evidence; and a revision to the state's Rules of Professional Conduct to specify that prosecutors have a duty to seek justice and not merely to win convictions.

Florida

The Supreme Court of Florida on February 21, 2002, announced that, as one of several changes to its capital litigation rules, it was extending its rule establishing minimum standards for attorneys in capital cases to public defenders and to private counsel retained to represent capital defendants at trial or on direct appeal. The rule had previously applied only to appointed counsel. In extending the minimum standards to private counsel, the court sought to avoid leaving an unnecessary gap in its efforts to minimize post-conviction problems and delay by focusing on the quality of capital trials and the direct appeals process. The court cited the abundance of learning opportunities—including continuing legal education programs and mentoring programs that allow private counsel to second-chair capital cases with experienced appointed defense attorneys or public defenders—available to private counsel who do not currently meet the standards, but nonetheless wish to engage in capital defense practice. In recommending this extension of the rules to the court, Florida's Minimum Standards Committee was guided by the rules for appointing counsel in capital cases in California, Indiana, Louisiana, Ohio, and New York, and the American Bar Association Standards for appointing counsel in capital cases.[1]

Washington

The Washington State Supreme Court in June adopted changes to its Superior Court Special Proceedings Criminal Rule 2 to require that trial courts in capital cases appoint two capital defense attorneys with a minimum of five years of experience, one of whom must be on a list of attorneys approved by a committee appointed by the Washington Supreme Court. Washington's new rules also limit new appointments to attorneys not already serving as appointed counsel in another active trial court capital case.

Other Efforts

Other capital representation initiatives have begun as truly grassroots efforts. The Fair Trial Initiative was established in 2001 by three young North Carolina attorneys deeply concerned with the quality of representation available to indigent capital defendants in North Carolina. The program hires recent law school graduates as two-year fellows, who receive specialized training in factual investigations, motions practice, and penalty phase practice, and are assigned to work with underfunded capital defense attorneys. The program also has pro bono and summer externship components. The goals of the program include enlarging the corps of experienced capital defense attorneys, improving the quality of death penalty representation, and educating the public about inequities in the death penalty system. The program currently has three first-year fellows and three second-year fellows.

[1] See generally, In Re: Amendment to Florida Rules of Criminal Procedure—Rule 3.112 Minimum Standards for Attorneys in Capital Cases, No. SC90635 (Fla. February 21, 2002), available at http://www.flcourts.org/.

Court rulemaking authorities increasingly will be expected to evaluate the performance of their public defense and appointed counsel programs, whether in response to popular or political criticism of those systems or in defense of systems under legal attack. To assist states in assessing the effectiveness of their public defense systems, the American Bar Association in 2002 released a report titled *The Ten Principles of a Public Defense Delivery System*. The report is a quick reference guide for government officials and public policymakers charged with implementing or reforming an existing public defense delivery system and provides insight into the day-to-day administrative functions of a public defense system for those decision makers who are unfamiliar with public defense.

Implications for the States Post-*Ring v. Arizona*

The United States Supreme Court on June 24, 2002, announced its decision in *Ring v. Arizona,* No. 01-488 (decided June 24, 2002). *Ring* overruled the Court's decision in *Walton v. Arizona,* 497 U.S. 639 (1990), to the extent that *Walton* permitted a sentencing judge sitting without a jury to find an aggravating circumstance necessary to impose the death penalty. In holding that juries must instead find aggravating factors, the Court ruled unconstitutional not only Arizona's capital sentencing procedure, but also similar judge-only sentencing procedures in Colorado, Idaho, Montana, and Nebraska.[2] *Ring* resolves an inconsistency between *Walton* and the Court's 2000 decision in *Apprendi v. New Jersey,* 530 U.S.466 (2000), which requires jury findings on any matter that would expose the defendant to greater than the maximum penalty allowable for the offense of which he is convicted. *Apprendi* arose from a conviction and sentence involving a hate crime enhancement statute that doubled the penalty for felonies motivated by racial animus. The theory behind the decision in *Ring* is that defendants convicted of capital crimes are not thereby eligible for the death penalty unless one or more aggravating factors are found pertaining to the crime. Apart from any aggravators, capital defendants can, at most, be sentenced to life without parole.

Juries alone decide the sentence capital defendants will receive in 29 of the 38 states that have capital punishment laws.[3] Still unclear after *Ring* is whether the high court will next invalidate advisory sentencing schemes like those in Alabama, Florida, Delaware, and Indiana. In these states, juries make findings about factors in aggravation and mitigation and make nonbinding recommendations about sentencing to the judge, who makes the final sentencing decision. The Florida approach was given the constitutional stamp of approval in *Hildwin v. Florida,* 490 U.S. 638 (1989) (*per curium*). The majority opinion in *Ring,* written by Justice Ruth Bader Ginsburg, notes that Timothy Stuart Ring did not argue in his claim that the Sixth Amendment requires a jury to make the ultimate determination whether to impose the death penalty; as Justice Ginsburg notes, "It has never been suggested that jury sentencing is constitutionally required."[4] The question of whether advisory sentencing is constitutional after *Ring* remains to be addressed.

Implications for the States Post-*Atkins v. Virginia*

The Supreme Court in its 2001 term reversed its 1989 decision in *Penry v. Lynaugh,* 492 U.S. 302 (1989), a Texas case, to hold that the execution of mentally retarded defendants violates the Eighth Amendment's prohibition against cruel and unusual punishment. The question now left to the states to resolve in the wake of *Atkins v. Virginia*, No. 00-8452 (decided June 20, 2002), is to define the standard for mental retardation in their criminal codes.

Before the Supreme Court's decision in *Atkins v. Virginia,* 18 of the 38 states with the death penalty and the federal government prohibited execution of the mentally retarded. The Death Penalty Information Center has produced a chart listing these states; the chart includes citations to the criminal code provisions defining mental retardation and a synopsis of each state's definition.

The definition of mental retardation developed by the American Association on Mental Retardation (AAMR) is the authoritative definition in the mental health literature, and most preexisting state provisions are modeled after it. The AAMR defines mental retardation in terms of its impact on cognitive functioning and daily activities, and in terms of age of onset. These three elements are common to most of the state definitions that preceded *Atkins.*

The AAMR published a revised definition of mental retardation in 2002. The AAMR's revised diagnostic manual can be ordered through its Web site (www.aamr.org). Additionally, the AAMR Web site currently features an article by University of New Mexico School of Law professor James W. Ellis that provides a thorough analysis of the constitutional, political, practical, and procedural issues to be considered by legislators when drafting a statute defining

[2] Ring v. Arizona, 536 U.S. __ (2002) (slip op., n. 6 at 21-22).

[3] See Ring v. Arizona, 536 U.S. __ (2002) (slip op., n. 6 at 21). See also David Rottman et al., "Table 46: Sentencing Procedures in Capital and Non-Capital Felony Cases" in *State Court Organization 1998* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000).

[4] Ring v. Arizona, 536 U.S. __ (2002) (slip op., n. 4 at 11), quoting Proffitt v. Florida, 428 U.S. 242, 252 (1976) (plurality opinion).

mental retardation and procedures for determining whether a particular defendant qualifies as mentally retarded: "Mental Retardation and the Death Penalty: A Guide to State Legislative Issues." Professor Ellis's article includes the new AAMR definition and a discussion of its various elements and their application and interaction. Professor Ellis makes recommendations of specific statutory language legislatures can incorporate.

In a twist of fate, the Supreme Court's decision in *Atkins* was announced during the pendency of John Paul Penry's third capital murder retrial. Mr. Penry was the petitioner in the 1989 Supreme Court case that required allowing jurors to consider mental retardation as a mitigating factor at sentencing. In the 2002 case, jurors were reconsidering only Mr. Penry's sentence. Like many states, Texas does not have a definition of mental retardation in its criminal code; instead, the judge instructed the jury in Penry's case on mental retardation as a special issue in the charge. On July 3, 2002, the jury in Penry's cases decided he was not mentally retarded and once again sentenced him to death for the 1979 rape and murder for which he was convicted. The new sentence was immediately appealed.

Budget Woes and Resourceful Thinking

Kenneth G. Pankey, Jr.

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_FundCt_Trends02_Pub.pdf

That most courts are sharing in the pains caused by the current recession is hardly news. That circumstances are likely to worsen before they improve is also widely accepted. Nevertheless, if historic patterns hold, the courts will fare better than most executive branch agencies during the short term; as institutions, the courts are in no immediate danger. Less certain is how courts will position themselves during this period of austerity and how their actions, and developments in other areas, will affect the long-term quality of justice.

Budget Conditions

Findings from surveys conducted by the National Center for State Courts and completed by state court administrators in November 2001 and July 2002[1] reveal that state courts have not experienced budgetary effects equally. Indeed, for FY 2002, the majority of the responding state courts reported increases in their state appropriations, which they assessed as adequate or better for their needs. Although the reports for FY 2003 were less favorable, with a plurality indicating budget restrictions (see Figure 1), more court administrators than not still rated their FY 2003 state appropriations as at least adequate (see Figure 2). Many factors are at play here, including the relative strengths of local economies and associated lag times between business downturns and their effects on government revenues. In addition, varied levels of dependence upon state versus local revenues for funding the

[1] *See generally*, results presented at the 2002 Annual Meeting of the National Association for Court Management, "Court System Budgets: Keeping the Doors Open."

Figure 1
Changes in Budget Appropriation from PreviousYear (n=42)

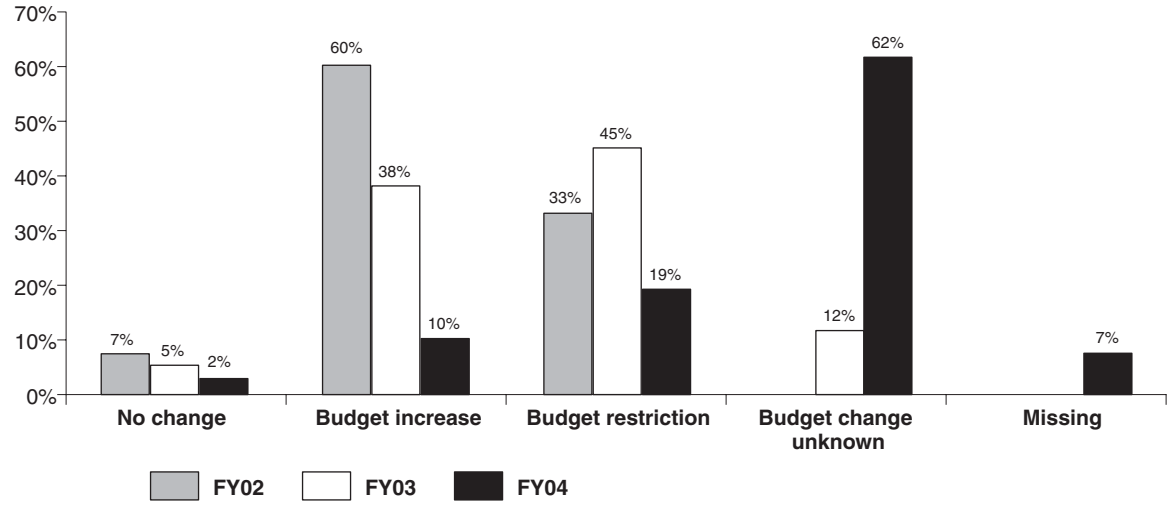
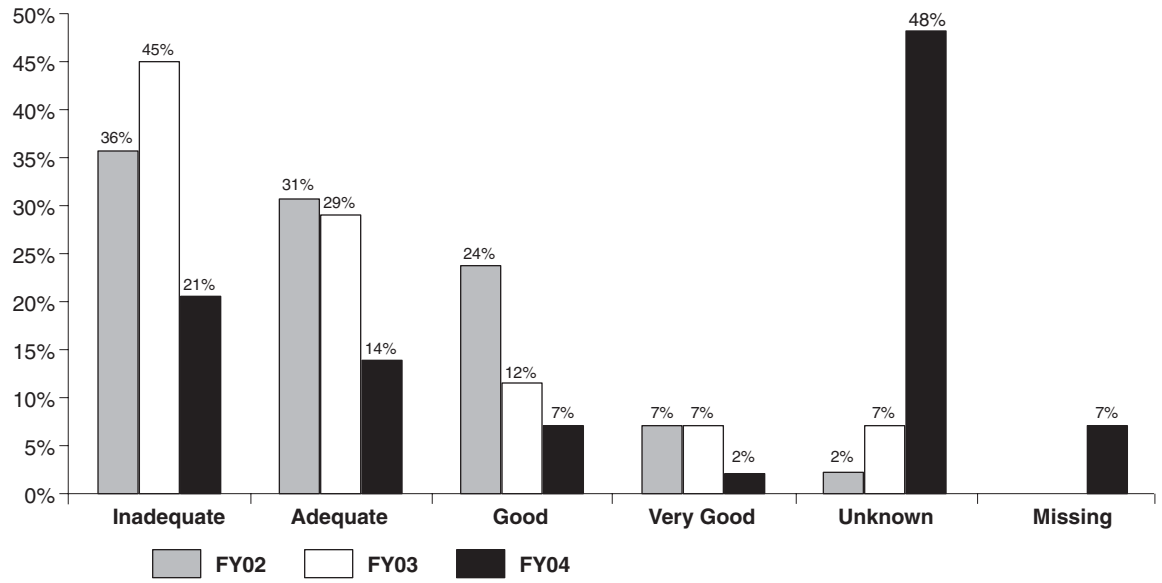


Figure 2
Adequacy of Judicial Branch Appropriations for Years Listed (n=42)



courts and greater control and prudence in some legislatures over state spending have had different impacts upon court finances and court responses.

Court Reactions: The Woeful

In slowing economic conditions, governments tend to reduce expenses without reducing or eliminating services or positions. Too often, this leads to cuts that "eventually leave them less able to deliver services efficiently and effectively: cutting management analysis, employee training, IT budgets and the like."[2] The two National Center surveys confirmed that many courts are following this pattern. For FY 2003, 38 percent of the 42 jurisdictions responding to the July survey indicated they had reduced training, while another 14 percent indicated training cuts were contemplated in FY 2003. Thirty-eight percent also indicated they were delaying technology improvements in FY 2003, with another 17 percent indicating they contemplated such action. Sixty percent of the responding states had reduced general purchases and capital expenditures, and 26 percent had reduced maintenance services; more states were contemplating such actions. Perhaps even more dismaying was that a number of states were cutting or even eliminating specialty courts and programs; such cost reductions, which, notably, may not have been initiated by the judicial branch, jeopardize many of the promising diversionary and treatment efforts that are at the heart of problem-solving court initiatives.

Although many state courts are far from being in desperate circumstances and might feel that more painful measures are not yet necessary, the projected increases in the severity of government budget problems lead one to think that some courts are delaying the inevitable—and perhaps adding to future problems. The phrase "penny-wise and pound foolish" comes to mind. Given the hiring delays and freezes that are commonplace in recessions (62 percent of the state courts had already taken this action in FY 2003), the training of existing staff becomes even more critical as the means to acquire new, and improve existing, knowledge and skill sets within an institution. Where technology, such as new PCs, makes operations more efficient, it allows courts to save more money over time. Cuts in needed capital and maintenance areas usually lead to much higher costs down the road. In cutback climates, governments also tend to reduce efforts in strategic planning, performance management, and other evaluations, but such activities are even more important in hard times because they inform the organization about which programs work, which do not, and which should receive priority for preservation or the budget ax.[3]

Organizations under stress or in crisis tend to focus inward. Consequently, they may fail to realize that there are

[2] Katherine Barrett and Richard Greene, "Bad-News Budgeting," *Governing* (November 2001): 80.

[3] Id.

consequences and perhaps even solutions outside their walls. Appropriating bodies, being removed from the realities of court and agency operations, often miss or discount the critical interaction of causes and effects that should influence *their* budgetary decisions. Drug courts, for example, have become a key component in intergovernmental efforts to treat drug dependence, improving societal efforts to get drug offenders into treatment programs and keeping them there, with periodic monitoring, long enough to make a difference. Every dollar spent on drug courts and related treatment programs yields manifold returns in reduced drug-related crime, criminal justice (law enforcement, prosecution, and corrections) costs, and theft, not to mention further savings related to health care. Major savings to the individual and society also come from significant drops in interpersonal conflicts, improvements in workplace productivity, and reductions in drug-related accidents.[4] Despite such successes, the current economic downturn is threatening these socially effective, problem-solving collaborations in Virginia[5] and other states. Discontinuation of such programs is likely to increase domestic and criminal cases in the long term and correctional expenses in the short term because those who might otherwise be diverted to alternative programs must now be incarcerated. Given the immediate impact on correctional budgets (over $20,000 annually per offender), might state officials consider shifting some correctional funds to preserve effective treatment and community service programs (the most expensive of which cost about half as much per offender), including drug courts?[6]

Court Reactions: The Resourceful

Thankfully, not all trends in the financial environment are so negative. Some courts are taking very positive steps in response to or in anticipation of financial constraints. Fifty-seven percent of the July survey respondents indicated their courts were making greater use of electronic communications. Thirty-one percent were making further investments in automation, and 31 percent were providing cross-training to staff. One-third indicated they were increasing efforts to collect fines and fees, with more states contemplating such action. States are looking for alternative revenue sources, such as funding from government grants and nonprofit foundations, and attempting to increase revenues from existing sources, such as court costs. Although creating or increasing surcharges is a poor policy choice, thoughtfully considered increases in basic fees are fair methods for covering some operating expenses. One state that has reportedly been very successful in securing funding from grants has been Missouri; in the last five years, the Missouri Office of the State Courts Administrator (OSCA) has benefited from over $28 million in grant funds.[7]

Efforts of the Delaware court system show how courts can tackle resource issues more strategically. Concerned for the continued improvement of the Judicial Branch's business plans and practices in light of sometimes inadequate appropriations from the General Assembly, the Delaware Supreme Court created the Court Resources Task Force in 2002.[8] In addition to exploring existing and alternative revenue sources, the Task Force, whose members came largely from outside the court system, studied the effectiveness of budget and staffing structures within the court system and examined how the courts might develop partnerships with the bar, academic institutions, and other private-sector groups to address the courts' personnel and resource requirements. The Task Force's recommendations, which were in draft form at this writing, included:

- reassignment of certain financial and technological functions and associated staff from the trial courts to the state court administrator's office
- appointment of a permanent pro bono advisory committee to succeed the Task Force in assisting the judiciary with administrative and business concerns
- establishment of an Equal Justice Fund within the Delaware Community Foundation, an existing nonprofit organization, to seek and disburse private contributions to assist in addressing needs within the state judicial system
- centralization of the process of tracking and reporting grants and development of a new relationship and understanding with the General Assembly so that budget and grant funding will coordinate more effectively and efficiently with court system priorities
- consideration of possible increases in court fee structures, keeping in mind concerns over access to the courts

[4] "FAQ 11. Is Drug Addiction Treatment Worth Its Cost?" from National Institute on Drug Abuse, *Principles of Drug Addiction Treatment: A Research-Based Guide* (Washington: NIDA, National Institutes of Health,): 21. See also Elaine Stuart, "Rehab, Not Jail," *State Government News* (September 2001): 26; Blaine Corren, "Study Bolsters Drug Court Claims," *Court News* (California) (May-June 2002): 1.

[5] John D. Tuerck, "Drug Courts Threatened by Budget Cuts," *Virginia Lawyers Weekly* (March 18, 2002): 1.

[6] Stuart, p. 28; Tuerck, p. 20.

[7] Jeffrey Barlow is the Sponsored Programs Administrator at the OSCA. He is responsible for locating, applying for, and administering funding on behalf of the Missouri Judiciary. He teaches grants administration for the National Center for State Courts' Institute for Court Management.

[8] Administrative Directive No. 136, Supreme Court of Delaware (January 9, 2002).

- centralization of all court collection efforts under a modern Office of State Court Collections Enforcement
- continuation of the Case Management Off-the-Shelf Software (COTS) initiative, redesigning court workflows where appropriate to create efficiencies in acquiring a single case management system
- collaboration with state education institutions to develop meaningful intern scholarship programs and to explore the use of faculty for special initiatives and of student volunteers to help with court public service efforts

The Task Force was careful to consider potential ethical issues, including courts' avoidance of actual or perceived conflicts of interest, as it formulated its recommendations for the Judicial Branch.

In conclusion, as government budgets become tighter, the operating conditions for courts are likely to become more difficult, but they need not become dire. Where courts have a choice about how funds are used and what, if necessary, must be cut, some choices are clearly better, if not less painful, than others. Tough budget conditions demand strategic thinking and provide perfect opportunities to justify needed changes that might have been more politically difficult when budgets were flush. Where budgetary cuts may be outside the court's control, the court may still have influence over programmatic spending, particularly if it is prepared, with other interested legal, business, social service, and criminal justice agencies, to defend successful programs and to offer constructive alternatives to appropriating bodies.

Computer-Based Interpreter Testing

Wanda L. Romberger and Madelynn M. Herman

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_CtInte_Trends02_Pub.pdf

Current Statistics

The need for qualified interpreters in the courtroom continues to grow. The number of languages being spoken in trial courts around the nation is also on the rise. Three hundred and twenty-nine languages are spoken in the U.S. at any one given time. More than 224 languages are spoken in California alone, and some 32 percent of the state's residents speak a language other than English.

Because of this, training and testing of interpreters remain extremely important considerations for all trial courts. Twenty-nine states are now members of the Consortium for State Court Interpreter Certification, with Indiana, its newest member, joining in 2002. Among other benefits, the consortium provides member states with access to 17 oral interpreter examinations in 11 different languages. More oral examinations, including Somali and Bosnian/Croatian/Serbian, are being developed.

Recently, the consortium developed a written screening examination to help member states ensure that potential interpreters possess a minimum level of proficiency in English before they take the oral examinations. In most states, the written examinations are scheduled for specific dates, and the exam is administered in classroom style to a number of individuals simultaneously.

Computer-Based Interpreter Testing in Texas

In Texas, a relatively new member of the consortium, the Texas Department of Licensing and Regulation (TDLR) was assigned the responsibility by law to oversee the interpreter-licensing program. Most other consortium member states "certify" their interpreters. Because this department oversees a variety of licensing programs, it implements and administers the interpreter-licensing program in much the same way that it does other licensing programs. That means that the written examination is administered at testing centers around the state via computer. Texas began offering the computer-based written test in September 2002.

How It Works

Examinees call a central 800 number to schedule an appointment for the examination. When the examinee appears at the scheduled time, a proctor at the testing center processes all necessary documentation and identification and instructs the examinee on procedures for taking the examination. The examinee follows instructions on a computer screen and proceeds through the multiple-choice, three-part written examination.

When the examinee is finished, he or she presses an appropriate key and the examination is processed and scored. Within seconds, the score is calculated and transmitted to a printer in the proctor's area of the test center. The examinee receives a copy of the results of the exam when he or she leaves the testing center.

It is not necessary for an examinee to have typing skills or even to be computer literate. Simple instructions on the use of four or five keys on the keyboard, or just the use of a mouse, allows every examinee to participate in the examination.

Confidentiality Issues

Because confidentiality is always of grave concern, Texas takes specific steps to ensure the confidentiality and security of all test materials, including blocking any printing options at test terminals. The proctor ensures that no notes are carried away from the test terminal, and no recording devices, cell phones, or reference materials are allowed into the test area.

Benefits of the Texas Model

Administering the exam via computer makes the test available to any interested person during business hours, all year. Clearly, the examinees feel this method is more beneficial because they do not have to travel to a central testing site. Travel distances could be in excess of 500 miles for a state the size of Texas. It remains to be seen whether the Texas model will be more cost-efficient in the long run, and the Texas Department of Licensing and Regulation and the National Center for State Courts will report on the program's progress to the consortium.

Future Plans

The next step in the Texas plan includes administration of the three-part Oral Proficiency Examination using computer-based testing. This endeavor will be more challenging than the written examination, in that the examinee is required to interpret aloud in three modes of interpretation. The spoken word of the examinee will be recorded and, later, scored by a team of expert raters. Because consistency of administration of the oral examination is a strong component of the overall reliability and validity of the test instrument itself, computer-based testing will lend itself well to that particular component.

The software used must include certain specific "rules of administration." For example, an examinee is entitled to two repetitions of utterances during the consecutive portion of the exam. Because the examinee will most likely control (from the keyboard) which utterance he or she would like to have repeated, the software must recognize when a second repetition has been requested and refuse to repeat any additional portions of the examination, regardless of keyboard manipulation.

The three portions of the examination are timed, and that timing should not pose any particular problem for programming the software. However, additional challenges must be overcome before the Oral Proficiency Examination will be offered by computer-based testing techniques. The National Center for State Courts met with the Texas director of licensing and e-commerce, Don Dudley, in October to train administrators of the oral examination in that state in the traditional manner and to collect data that will help pave the way for computer-based administration.

It is an exciting and innovative approach to interpreter testing, both written and oral. The National Center is anxious to assist Texas, monitor the outcomes, and report them to the other consortium members.

Court Interpretation Resources (Court Information Database, www.ncsconline.org)

"Court Interpretation Home Page." National Center for State Courts, Research Services. Provides links to the Consortium for State Court Interpreter Certification Program, list of member states, language tests available, study guides, test schedule, qualifications, surveys, court interpreter state programs, state court interpreter program contacts, as well as other resources.

"Court Interpretation Resource Guide." National Center for State Courts, Knowledge and Information Services, 2002. Provides links to many print and online resources on court interpretation, including NCSC-published materials on court interpreting; highlighted publications (including best practices); resources for judges, court staff, and interpreters; telephone and remote court interpreting; the need for court interpreters; training and certification of court interpreters; interpreters for the deaf; court cases/rulings; and videos.

"Court Interpretation Frequently Asked Questions." National Center for State Courts, Knowledge and Information Services.

Communication Is the Key in Court Security

Amanda C. Murer

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_CtSecu_Trends02_Pub.pdf

The way we live our everyday lives has changed dramatically over the past few years. First, the terrorist attacks on September 11 brought the realization that we were no longer secure within our borders. More recently, the sniper shootings in Washington, D.C., and surrounding areas made all citizens feel like potential targets. Both of these tragedies redefined the primary focus of security in America, including how we handle court security.

Changes in Court Security

Court security previously focused on protecting individuals, such as court staff and the public. Courts used to be more concerned with prisoner transport, weapons screening, and key control. Now, security is a global issue, with the primary directive of guarding the institution as a whole. However, because the courts are there to serve the people, it can be rather difficult to focus on protecting the institution. How can a court protect itself, yet still focus on the needs and protection of individuals?

Installing and upgrading security practices have become a major part of the justice culture nationwide. Some courts have provided more security officers, where other courts have installed technological security devices, but current issues surrounding budget cuts in many states have put restraints on "wish lists" and security necessities.

Communication with Others in the Court Community

There are several things a court can do to increase levels of awareness and security despite the lack of funds. Communication within the justice community and other government agencies is a simple step. Just by opening lines of communication, a court can understand what is going on in the community, state, and country and dramatically alter the goals of a security plan. Sharing ideas and collaborating with others will produce a united front against potential threats.

Ways to Update a Court Security Plan

Questions court administrators should address about their current security situations include:

- Do you have open lines of communication between you and other individuals involved in the law enforcement and judicial communities?
- Do you know the Homeland Security contact person in your state?
- Have you walked through your court and evaluated how secure all possible entrances are?
- Have you evaluated the grounds of your courthouse as potential bombing targets (foliage close to the building, cars parked too close)? If so, how often do you check these areas?
- How secure are your court records from the public? Are you prepared for hackers?
- How often does your court staff change the passwords on their computers, and do you have specific guidelines for when they change them?
- Do you know other individuals in neighboring courts and jurisdictions that can help you in times of an emergency?
- Do you have an all-hazard disaster recovery plan?
- Do you have evacuation procedures in place?

- Is your staff properly trained in case an emergency was to happen in your court? If so, how often do you have drills involving your staff?
- Do you know where you can "set up court" in case your courthouse is temporarily out of service because of floods, earthquakes, anthrax exposure, etc.?
- Do you have partnerships with members of the law enforcement community?
- Have you set up procedures to open mail or prevent contamination threats, such as anthrax or other biohazards?

RESOURCES

"Guidance for Protecting Building Environments from Airborne Chemical, Biological or Radiological Attacks." Department of Health and Human Services, Center for Disease Control and Prevention (May 2002).

Root, Oren. "The Administration of Justice Under Emergency Conditions: Lessons Following the Attack on the World Trade Center." Vera Institute of Justice (January 2002).

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Court Security Guide. Williamsburg, VA: National Association for Court Management, 1995. (NA4471 .C68)

Integrated Criminal Justice Information Systems: Communication, Collaboration, and Cooperation

Linda L. Walker

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_ICJISTrends02Pub.pdf

The Keys to Successful Integrated Criminal Justice Information Systems

Since the mid-1990s, state courts, law enforcement, and other entities involved in public safety and justice have acknowledged a need for the electronic exchange of information among their various agencies—an integrated criminal justice information system (ICJIS). Most states have initiated efforts in this direction, but results have been less than satisfactory. Major barriers have proved to be political in nature. A lack of trust among participating agencies, coupled with fear of losing control of their turf, tends to impede progress. Another obvious major obstacle in building an ICJIS is lack of funding. However, stakeholders are discovering that communication, cooperation, and collaboration among agencies are overriding issues of funding, hardware, software, data ownership, and the need for a universal personal identifier. Success stories such as Colorado's Integrated Criminal Justice Information Systems (CICJIS) and Pennsylvania's Justice Network (JNET) have their foundations in solid policy planning, years of collaborative efforts, and adequate funding.

ICJIS—What Is It?

A comprehensive ICJIS system draws its data from many sources, such as court case files, mug shots, fingerprints, driver's licenses, correctional facilities, and criminal histories. The ideal of an ICJIS begins with the information that law enforcement gathers from a crime scene or an offender—information from as close to the source as possible. This data may be entered electronically from a squad car or tied to personal identifiers, such as fingerprints and photos by an investigating agency. As a case passes through the system, authorized information is augmented by the prosecutor's system, the public defender's system, social agencies, the courts, corrections, adult and juvenile probation, and other interested parties. Each entity controls the information that it adds to the data pool and also may control who is allowed to view their data. The result is a comprehensive offender-tracking system complete with biometric identifiers and criminal histories. Extensive information-sharing networks are the backbone of this type of data interchange.

The 9/11 Influence

The improvement of justice information sharing and systems integration has received a new sense of priority since September 11 in that offender tracking is an essential element of the homeland security effort, and information sharing fits well into the overall strategy of the effort. The JNET project in Pennsylvania played a significant role in helping the FBI identify and locate suspects from United Airlines Flight 93, which went down in western Pennsylvania. A list of all the passengers on the flight was fed through the JNET system, resulting in the location of a driver's license photo for one terrorist and an arrest record for another.[1]

In conjunction with homeland security, the National Governors Association has announced that it will launch a pilot project in various states that will serve as a model for integrating automated systems in all 50 states. The proposed model for this system is Pennsylvania's JNET. The project is intended to allow federal, state, and local officials access to criminal record databases to protect against terrorism attacks. It is expected that over $1 billion will be spent on this effort.[2]

[1] Matt Wells, "A Model System," *Government Technology Magazine* (May 2002).

[2] William Welsh, "Governors Eye Security Initiatives," *Washington Technology* 17, no. 14 (October 7, 2002).

The Role of the Courts

Courts have long been important players in the integrated criminal justice information systems arena. Many ICJIS efforts of the late 1990s centered on court case management systems. The court community now needs to communicate, cooperate, and collaborate with participating agencies to build a national ICJIS network. The benefits to the courts include a networking backbone that is fundamental to the courts' own case management systems and an ability to share data that will result in reductions in data redundancy and errors.

Model Polices and Standards

Courts are being further assisted in their automation efforts by several model policy and standards projects, including the Legal XML Standards for electronic filing and the National Consortium for Court Functional Standards for case management. The consortium has embarked on a three-year program to develop automation guidelines that focus on reducing the time needed to obtain a new computer system, improving work processes, and reducing staffing requirements.

The Joint Technology Committee of the Conference of State Court Administrators and the National Association for Court Management developed a model Request for Proposal (RFP) for the procurement process for technology products and services that promises to save both time and funds in the acquisition process.[3]

Trends

With the increased significance of ICJIS to homeland security, the efforts of the National Consortium for Court Functional Standards and the Joint Technology Committee, and the inherent economies of an automated system, courts are in an excellent position to dramatically increase the quantity and the quality of court case management systems.

The importance of communication, cooperation, and collaboration is further illustrated by the willingness of participants in successful projects to establish Web sites to share their "lessons learned," such as the Pennsylvania Justice Network (JNET), and "Working Together Today," the Official Colorado Integrated Criminal Justice Information Web site.

[3] The Court Technology Database, National Center for State Courts.

Privacy and Public Access to Court Records: Public and Private Dimensions Create a Diverse Group of Collaborators

Martha Wade Steketee and Alan Carlson

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_PriPub_Trends02_Pub.pdf

Court files have historically been open to any member of the public who was willing to go down to the courthouse to access them. The open nature of case files and court hearings allows the public to monitor the judiciary and the cases it hears, to find out the status of parties and cases, and to track final judgments. Historically, certain types of court case files have been closed to the public, by tradition and practice. For example, many jurisdictions allow selective or limited access to many types of family court records and juvenile court records. The traditions of generally open access to court records, but restricted access to some cases or documents, have varied across jurisdictions for many years.

Innovations in technology in recent decades have made more court records available in electronic form and permit easier and wider access to the records that have always been available in the courthouse. Some court professionals debate distinctions between the concepts of "printing" of case records on paper, providing limited access to information in electronic form, and "publishing" or "broadcasting" information through the Internet. In addition, electronic court records and new compiling software allow court information to be aggregated and compiled by secondary users in new ways. Court records can be distributed in "bulk" by copying and making available whole databases to secondary users. It is also true that many of the nations' courts have paper-based case-filing systems, while other courts (sometimes within the same state) have many records and other information available in electronic form, creating practical inequities in public access to these records within a state.

Current practices, policies, technologies, and public expectations have led many groups to focus on developing outlines, guidelines, frameworks, and other work examining the balance between public access, personal privacy, and public safety, while maintaining the integrity of the judicial process. Some states have been pioneers in this area. Individuals are collaborating at all levels of government, from many professional perspectives, and from inside and outside the courthouse, to address the concerns of case records generally and court records specifically.

Federal Activities

The Judicial Conference of the United States drafted, put out for public comment, and adopted a privacy policy between June 1999 and October 2001. The Committee on Court Administration and Case Management, Subcommittee on Privacy and Public Access to Electronic Case Files, held meetings and conference calls and collected information from experts, academics, and court practitioners. A document was published for public comment from November 13, 2000, through January 26, 2001, and a Judiciary Privacy Policy Page (at www.privacy.uscourts.gov) was established to gather and publicize the comments. The Judicial Conference of the United States adopted the privacy policy recommendations at its September/October 2001 session and modifications to the prohibition against remote public access to electronic criminal case files were adopted in March 2002.

The National Consortium for Justice Information and Statistics (SEARCH), in conjunction with the Department of Justice's Bureau of Justice Statistics (BJS), sponsored the National Task Force on Privacy, Technology, and Criminal Justice Information (see Report of the National Task Force on Privacy, Technology, and Criminal Justice Information) , which focused on laws and policies regarding criminal records information. The report of the task force, published in August 2001, outlined 14 recommendations for state activity, including the establishment of task forces to address the issues outlined in the report.

Justice Information Privacy Guideline—Developing, Drafting and Assessing Privacy Policy for Justice Information Systems was completed under the auspices of the National Criminal Justice Association (NCJA) in September 2002 with funding from the United States Department of Justice, Office of Justice Programs. The goal of this new *Guideline* is to provide assistance to justice leaders and practitioners (including police, service agencies, and the courts) who seek to balance public safety, public access, and privacy when developing privacy policies for their agencies' systems, especially as they anticipate developing integrated justice systems that involve data sharing.

In 1998 the Office of Justice Programs (OJP) formed the Global Advisory Committee (GAC) to identify challenges to the formation of justice information-sharing networks as well as to define standard requirements for data sharing (see Global Justice Information Network). The GAC includes a working group on Privacy and Data Quality, which continues to focus on issues related to criminal history records, criminal intelligence information, juvenile and civil justice information, and privacy issues involving justice information-sharing networks.

National Effort to Craft Guidelines for Use in the State Courts

Several organizations that work in and fund initiatives in the nation's state courts developed a project initially titled "Developing a Model Written Policy Governing Access to Court Records." The State Justice Institute has funded this project since January 2001, which is staffed by the National Center for State Courts and the Justice Management Institute, on behalf of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA). The project received guidance from a broad-based national committee that included representatives from courts (judges, court administrators, and clerks), law enforcement, privacy advocates, the media, and secondary users of court information. The project sought public comments on a February 2002 draft document between mid-February and the end of April 2002. During three meetings in 2002, the project's advisory committee agreed to shift the focus from the product as a "model policy" to "guidelines" for state and local policymaking. The primary project product, "Public Access to Court Records: *CCJ/COSCA Guidelines* for Policy Development by State Courts," does not aim to prescribe standard implementation and operating guidelines for state and local courts but seeks to outline the issues that a jurisdiction must address in developing its own rules, and provides one approach. The project revised the draft in July 2002 and submitted it to CCJ and COSCA for their endorsement. Both conferences adopted a resolution endorsing the *Guidelines* and commending them to the states. Detailed information about the project process, the final project report and final *CCJ/COSCA Guidelines* version, and the draft of the *CCJ/COSCA Guidelines* put out for public comment (and all comments received) are available on the project Web site (www.courtaccess.org/modelpolicy).

The *CCJ/COSCA Guidelines* are based on the following premises:

- Retention of the traditional policy that court records are presumptively open to public access
- Whether there should be access regardless of the form of the record (paper or electronic), although the manner of access may vary
- The nature of certain information in some court records is such that remote public access to the information in electronic form may be inappropriate, even though public access at the courthouse is maintained
- The nature of the information in some records is such that all public access to the information should be precluded, unless authorized by a judge
- Access policies should be clear, consistently applied, and not subject to interpretation by individual courts or court personnel

Tracking Innovation in the States

Some states have been innovators in crafting policies that attempt to protect privacy, and promote public safety, while providing public access to court records. Other states have older policies that are limited in scope and need to be reviewed and updated. Sue Jennen Larson's 1995 publication *Developing a Model Written Policy Governing Electronic Access to Court Records* provided an initial outline of state efforts and is now available at http://www.courtaccess.org/ under "Legal." This Web site provides ongoing updates of state data policies, media coverage, and relevant national efforts. The final report of the *CCJ/COSCA Guidelines* project includes an appendix with cross-references and links to selected state rules and case law used in developing the *CCJ/COSCA Guidelines*, focusing primarily on Arizona, California, Colorado, Minnesota, Vermont, and Washington. In addition, the National Center for State Courts' Knowledge and Information Services Office collects information on these issues and has online resources in its Court Information Database.

The National Center for State Courts, the Justice Management Institute, and other partner organizations will continue to monitor state innovations in privacy and access to court records. The next step for many jurisdictions is to adapt their current rules and policies in light of the various models, the *Guidelines*, and examples that now exist to protect personal privacy while allowing for public access to the court records maintained by the state courts.

The Paperless Law Practice

Kala M. Finn

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_ElFile_Trends02_Pub.pdf

The fundamental elements of the legal profession are information and communication. Today, these fundamentals are adapting to advances in technology, and the profession is changing the way information is stored, exchanged, presented in the courtroom, and communicated to the public. Thus, the law, like many other professions, is tapping into cyberspace. Both the courts and law firms are moving toward the virtual world of electronic documents as high-technology courtrooms and law firms become more commonplace. Accordingly, law firms and the courts are embracing technology, and changes are taking place that affect not only the flow of information but also the traditional flow of work within the courthouse and the law office.

Technology and the Practice of Law

During the 1990s, the United States experienced a technological revolution beyond what any clairvoyant could have predicted. This "Age of the Internet" has had an impact upon every facet of society, including the law and the courts. Judges and lawyers now use technology for legal research, communication, legal education, presentation of evidence in court, and security.[1]

Today's fully automated law firm is a marvel of modern machinery, outfitted with computers, networking, voice mail, e-mail, fax, pagers, cell phones, copiers, scanners, shredders, and sophisticated software programs that chart every action, every expense, every phone call, every copy, and every billable moment in every day. The question is whether the practice of law has become easier or better due to these evolving technologies.[2] For many attorneys, the fax machine alone may cause more problems than it solves. Consequently, many of the recent inventions promising to save time for attorneys actually have the unintended effect of consuming additional time. More accurately, technological inventions create new tasks and raise expectations, thereby canceling out the time that they save. Even though today's law office is full of timesaving devices, attorneys are spending more time at the office and working harder than ever because these new technological inventions create new tasks.[3]

Furthermore, new technology in telecommunications and computers allows for more mobility, so a lawyer can be "connected" to the office and "reachable" even if he or she is not physically present. Lawyers who remain constantly connected to the workplace by cell phone, fax, and e-mail sometimes feel that a cloud is hanging over their heads. On the one hand, there are obvious advantages in being "connected" to the workplace because it allows an attorney to be consulted at any time of the day to lend advice to ongoing projects. On the other hand, there is no longer an "outside" to the workplace; one is always either at work or "reachable."[4]

Moreover, it is important for lawyers to remember that technology is an option, not something that must be used in every case just because it can. Hence, the machine itself makes no demands and holds out no promises. If technology is allowed to become an end-in-itself, it will control the practice of law and the lives of those involved. It is up to the lawyer to decide when to use technology and when to turn

[1] The Honorable Susan Webber Wright, "Nelson Lecture: Earl F. Nelson Memorial Lecture: High Profile Cases In a Technological Age," *Missouri Law Review* 657 (Summer, 2000): 85, 785-786

[2] Douglas E. Litowitz, "Has Technology Improved the Practice of Law?" *Journal of the Legal Profession* 21 (1996-1997): 51, 51

[3] Litowitz, at 52.

[4] Litowitz, at 55-56.

it off. Technology has no sense of the humane; it can run nonstop all day and all night. Thus, control becomes the basis for harnessing the potential of technology, and control will lead to new uses for technology, such as the paperless practice of law, which consolidates the different media by which information is kept, exchanged, and communicated into one medium or one dimension by controlling the use of paper, computer software, voice mail, e-mail, and the fax.[5]

The Paperless Law Practice

The practice of law, like many other professions, is adapting to advances in technology. One such change has been the slow migration of law offices to paperless operations. This move is based not on isolated elements but on influencing factors coming from many directions. One factor is that the opportunity has presented itself, and another factor is that the courts are implementing electronic case filing and electronic case management systems that require law offices to produce electronic documents rather than traditionally accepted paper documents. In addition, the courts are equipping themselves with high-technology courtrooms where today's attorneys have a full range of information technologies at their fingertips, and clients and jurors are expecting these multimedia technologies to be used to their fullest potential during the course of representation and at trial.

As the courts move toward going paperless, so too are the law offices. Today, only a handful of attorneys have paperless practices, but this is changing as more and more attorneys realize the benefits, cost-effectiveness, and relative ease of the transition from traditional paper to electronic documents. Many lawyers are actually closer to going paperless than they may realize. The daily use of e-mail and electronic calendaring are good examples of beginning the transition.

Furthermore, going paperless is not only a change in the practice of law, but also a change in lifestyle. This simply means that lawyers will not be tied to their desks and will be able to practice law at any time and in any place they choose.[6] Hence, "the truly real difference between a 'Paperless Office' and a conventional office is a state of mind. It is the difference between being prepared to give up the tactile comfort of physical paper and replacing it with the convenience and efficiency of a virtual existence."[7] In addition, the cost is minimal, and so is the proprietary software.[8] The leap is simply a matter of commitment and consistency.[9]

The move from a traditional practice to a paperless practice does not require a significant capital investment. "The change is primarily one of workflow and culture. In terms of the office, it the trading of traditional filing cabinets with electronic storage." [10] In terms of workflow, it is a methodical conversion and retention process that can be outsourced to a vendor or done within the office using the appropriate imaging technology.[11]

Ultimately, this "change in workflow is the key to successfully going paperless. The following steps are applicable if the imaging is being done internally rather than outsourced to a vendor: (1) document is summarized in the database; computer gives the document a unique number; (2) document is scanned in PDF format and named the unique number; (3) document is emailed to the lawyer with the summary passed in the text of the email;(4) document is filed in sequential order for the matter,, using the unique number; (5) after the lawyer reads the email, it is deleted email."[12] This process eliminates the need for staff to keep files, and it saves a great deal of time and office space. Going paperless also frees the attorney from being a slave to the fax machine as a paperless practice enables the attorney to e-mail copies of documents to clients, counsel, and the courts implementing electronic case-filing systems, which in turn reduces the costs associated with mailing, faxing, and copying documents.[13]

The Electronic Case File

Electronic case filing is the filing of court documents in an electronic medium rather than in the traditional paper medium. This process is revolutionary in that it is changing the way courts interact with each other, with lawyers, and with the public.

In pilot district courts in the United States and in various state courts, there is a new system of case management whereby pleadings are filed electronically, which allows an attorney to file pleadings from his or her office and retrieve documents from the Web. If state and federal courts nationwide implement this type of system (and the Administrative Office of the United States Courts anticipates that this will be nationwide eventually), attorneys will no longer have to make trips to the courthouse to file pleadings, they will be less dependent on courier services and the mail, notices to other parties will be immediate, and pleadings could be filed at all hours of the day. There are parallel advantages to

5 Litowitz, at 66.
6 Richard K. Hermann, "Going Paperless," course presentation at Widener University School of Law.
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.*

those who work at the courthouse, and the reduction in paper alone would represent a drastic change in case management.[14]

The High-Technology Courtroom

New technology that allows parties to submit exhibits in an electronic format is allowing federal courtrooms across the country to become paperless. The federal judiciary has adopted strategic information technology initiatives targeted at reducing both the reliance on paper and the cost of its business processes. One of these initiatives is the new case management program of electronic case filing, and another initiative is the use of technology in the courtroom. Many state courts are implementing similar programs. Both the federal and state courts are installing video evidence presentation software, videoconferencing systems, real-time receiving software, monitors for judges and courtroom personnel, and real-time transcription technology. In addition, courts are also installing document cameras, video monitors, touch screen video monitors, computer input, audio input, customized presentation carts, attorney smart tables, and audio teleconferencing. [15]

Electronic information is commonplace in our lives, and now in the courtroom. Advanced technology allows attorneys to present and display many types of evidence and testimony to the judge and jury in clearer and more comprehensible ways.[16] Even though lawsuits may be tried in one place, the information needed to win them is now global. The new high-tech courtroom has to be wired within and without. It enables lawyers to employ, exchange, and present in court all of the digital trial information they have assembled to try the case, and it also allows counsel to reach outside of court resources that have not had a part in the routine conduct of trial.[17]

It must be noted that court technology is not about installing technology in courts. It is about people using technology in courts. As the transition to the high-tech courtroom is made, the law needs to be guided by the right philosophy as to what technology is put in court and why it is put there.[18]

State-of-the-art computer technology is consumer-driven, and neither judges nor anyone else can hold it still. Judges can only allow each new wave of technology to enter courtrooms as an innovation and exit in obsolescence, as does every computer product purchased for use in any law office. Technology in the courtroom can stay open to the process of change only by allowing litigators' cutting-edge technology to act as a compass for what the courts should embrace. By taking this approach, the courtroom of the future will always stay in step with the law office of the future. Courtroom technology is not a species apart. Employing common technologies in law offices and in courts will ensure that litigators can communicate with the courts, and express themselves with trial technology, wherever they find it.[19]

Consequently, what clients require now are lawyers with "media rhythm," the gift of using many communication media effectively. Today's trial lawyer has to be an effective advocate with pictures, sound, video, and language, while keeping each medium in balance so that the jury is not overwhelmed.[20]

Conclusion

The legal system continues to adopt and develop technology to enhance the way information is kept and disseminated. In many respects, technology will continue to transform the profession as it embraces new technology and attempts to maintain control of how the technology is implemented. Even though a handful of attorneys currently have a paperless practice, this approach to doing legal work will become more commonplace over the next five years as courts move toward electronic case-filing systems and traditional law firms respond to the courts and interact with paperless practices. The courts are driving the law firms, and the law firms are driving the courts when it comes to the fundamentals of information sharing and communication in new virtual media.

[14] Wright, at 790.
[15] Mary M. Weibel, ed., "Primer on Advanced Courtroom Technology," *American Bankruptcy Institute Journal* (LEXIS, July, 2002): 114, 1.
[16] Weibel, at 10.
[17] Samuel A. Guiberson, "The New Courtroom: Technology and Advocacy in the New Technology Courtroom," *Southwestern University Law Review* 28 (1999): 405, 407
[18] Guiberson, at 405.
[19] Guiberson, at 407.
[20] Guiberson, at 409.

RESOURCES

Courtroom 21 Project, Law Firm Technology Applications.

Courtlink by Lexis/Nexis—Courts Available Online.
www.courtlink.com/courts/index.html

Internet Law Center.
www.telelaw.com/vlo/vlo_center.asp

Electronic Case Filing: State Links, National Center for State Courts Knowledge and Information Services Office.

The Productive Lawyer, see class notes, Richard K. Hermann, Widener University School of Law. Mr. Hermann is a partner with Blank Rome Comisky & McCauley LLP.
www.theproductivelawyer.com

The Ethics of Problem Solving

Anne Endress Skove

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_SpePro_Trends02_Pub.pdf

The Trend

The changing roles of courts, from adversarial arenas to problem solvers, is part of the general trend in which "more attention is focused on educational, moral, and therapeutic roles in upholding the rule of law, defining acceptable behavior, reinforcing fundamental values, regenerating a sense of community, and protecting, guiding, and supporting children, the mentally ill, the disabled and other parties whose welfare so often depends on court services."[1]

Problem-solving courts focus on the underlying chronic behaviors of criminal defendants. Such courts include drug courts, mental health courts, teen courts, domestic violence courts, and DUI courts.[2] Problem-solving courts have proliferated: there are now over 1,200 drug courts,[3] 800 teen courts, and a growing number of mental health courts. The tenets that drive them are engrained in legal culture.

The Questions

The positive side of the "therapeutic"[4] or "problem-solving"[5] model includes stories from successful graduates who turned their lives around. However, many unanswered questions remain, including:

What ethical conflicts are created for judges, prosecutors, and defense counsel by the new model?

What ethical issues arise for other professionals involved?

Problem-solving courts, with their focus on the relationships between judges, attorneys, and clients, appear ethically sound. Drug courts, reentry courts, and mental health courts have received bipartisan support in the form of federal and state funding. Both bench and bar support the efforts. However, this enthusiasm may be dampened by the reality of the ethics codes and rules that bind judges and lawyers.

When Is a Judge Not a Judge?

The problem-solving model changes the judge's traditional role to "powerful motivator,"[6] "confessor, task master, cheerleader, and mentor."[7] Yet, many judges have embraced their new roles,[8] speaking passionately about their graduates and actively promoting the movement. Judicial enthusiasm may spring from the fact that in a problem-solving court, judges can be part of the solution. However, the question is not whether these processes benefit defendants or make legal professionals feel good, but rather how such processes can be reconciled with existing ethical duties of

1 Roger K. Warren, Memorandum (March 11, 1998).

2 For a review of different types of problem-solving courts, see Pamela Casey, Hillery Efkeman, Dawn Rubio, Anne E. Skove, and Jeanne Tyler, *Report on National Status of Promising Practices in Problem Solving Courts* (Williamsburg, VA: National Center for State Courts, 2002).

3 Caroline S. Cooper, *2000 Drug Court Survey Report: Program Operations, Services, and Participant Perspectives* (Washington, DC: American University, November 2001): 2.

4 "Therapeutic jurisprudence is the study of the role of law as a therapeutic agent." Bruce J. Winick, "The Jurisprudence of Therapeutic Jurisprudence," in Winick and David B. Wexler, eds., *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Durham, NC: Carolina Academic Press, 1996), cited by Hora et al., at 444.

5 Pamela Casey and David Rottman**.** "Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts," *NIJ Journal* (July 1999): 12-19. See also Conference of Chief Justices Resolution 22,Conference of State Court Administrators Resolution 4, "In Support of Problem-Solving Courts" (adopted August 3, 2000).

6 Jeffrey Tauber, *Drug Courts: A Judicial Manual* (Sacramento: California Center for Judicial Education and Research, 1994): 14. (KF3885 .5 T37)

7 Id., p. 15.

8 "[T]his 'new' role for judges may be viewed as analogous to the judge's role first developed under the public law litigation model, used by courts since the 1960s to remediate ongoing social problems by looking beyond the traditional trial-focused litigation." Quinn, fn. 59, citing Dorf and Sabel at 835.

judges, lawyers, and others on the "team." Potential ethical pitfalls for judges include:[9]

- Participation in extrajudicial activities, such as fund raising, community involvement, and attendance at drug court functions
- Ex parte communication with defendants
- Confidentiality, particularly if a defendant goes to another court later in the process
- Need to order drug testing and obtain other evidence
- Impartiality: the need to praise or sanction the defendant must be balanced with the judge's commitment to impartiality
- Program promotion[10]
- Coercion: judges can order a defendant to take medications, live in a particular place, see particular people, attend meetings, etc. (while this has been done to some extent in the traditional role, problem-solving courts rely on such intervention)[11]
- Use of judicial power versus a team approach

Some possible solutions to judicial ethics issues include:

- Use the Memorandum of Understanding (MOU) from start of process
- Make rules clear at beginning
- Have mechanism to resolve issues before they arise
- Rely on and be familiar with resources for judges (e.g., canons, presiding judge, ethics hotline, etc.) to ensure no violations
- Promote program in a positive manner rather than make sweeping criticisms of existing drug and sentencing laws

It has been suggested that ethical codes be changed because they do not acknowledge drug courts or the therapeutic model as they stand.[12] This suggestion indicates that current models are not aligned with ethical rules.

The Lawyer's Role

"[T]he lawyer's goal is not to win or to intimidate, but to do what is therapeutically best for the client."[13] This goal seems in opposition to the lawyer's mandate of "zealous advocacy."[14] In defense of the lawyer's role in problem-solving courts, ABA Model Rule 2.1 allows attorneys to exercise independent professional judgment and, if relevant, provide extralegal advice. Thus, an attorney is not limited to providing purely legal advice. Because most cases settle,[15] the problem-solving court process can be compared with negotiation, settlement, plea bargaining, or other processes. However, particular issues may arise for both the defense and the prosecution.

Issues for the Defense

Some of the strongest arguments against problem-solving courts have come from the defense bar.[16] Ethical issues and scenarios that defense counsel should consider include:[17]

- Whether defense counsel has a duty to the team
- Client "snitches" on others in program (common)
- Information from defendant can be problematic (attorney/client privilege applies to past crimes, but not future crimes)
- Defendant may deny using but admit possession
- Shifts in the burden of proof[18]

Possible solutions include:

- Fully advising the client before opting for a problem-solving court. Even though most problem-solving courts are voluntary, meaningful, informed consent of the defendant is required. Defendants should know their options, program requirements, and their legal rights.[19]
- Designating a member of the team to become the ethics expert to provide ongoing guidance.

[9] Based in part on panel discussions at the annual National Association of Drug Court Professionals (NADCP) meeting, Washington, D.C., 2002.
[10] "The court should accept responsibility for the financial viability of the program. . . . The judge should get to know local government officials and make sure that they know about the program. This may require lobbying the County Executive and/or Board of Supervisors for continued financial and political support. . . . It is important for the judge to develop good relations with local print and electronic media representatives, making sure that they are aware of program successes." Tauber, pp. 18-19.
[11] Tauber, p. 14.
[12] National Association of Drug Court Professionals (NADCP) panel.
[13] Karl Menninger, "Notes from the Chair," *Elder Law* 4, no. 4 (June 1999): 2.
[14] Rule 1.2(a) of the ABA Model Rules states that "[a] lawyer should abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued."
[15] Brian Ostrom et al., *Examining the Work of State Courts, 2001* (Williamsburg, VA: National Center for State Courts, 2001).
[16] Quinn, e.g.
[17] NADCP, 2002.
[18] But see Hora et al., p. 522.
[19] Hora et al., p. 479.

- Staying involved in the development of problem-solving courts to make the defense bar's concerns heard.[20]

Hora et al. note that "[c]ourts routinely demand that a defendant waive her Fourth Amendment right against searches and seizures as a condition of probation."[21]

Issues for the Prosecution

Investigative responsibility rests with the prosecution.[22] Many prosecutors also may favor a "law-and-order" approach and have concerns similar to those of victims' rights groups that problem-solving courts are too easy on offenders. In a problem-solving court, the "prosecutor must wear the new mantle of therapeutic team member."[23] Issues for prosecutors include:

- How to exercise prosecutorial discretion—more prominent here due to relapse, information sharing, etc.
- Public safety concerns vs. relapse during recovery

Suggestions for prosecutors involved in problem-solving courts include:

- Use MOUs to address, discuss sanctions in therapeutic vs. criminal contexts
- Be present at the table when problem-solving courts are planned[24]

Implications for Other Professionals

There are implications for other professionals, such as therapists, teachers, social workers, substance abuse counselors, and mediators, who might be involved in problem-solving courts, restorative justice procedures (e.g., family group conferencing), and other processes in which several professionals, all representing different interests, meet as a "team." Each profession has its own rules about confidentiality and the relationship with the client, for example.

How can a team cope with the various obligations of its members? A common practice is to have clients and other participants sign waivers. However, poorly crafted waivers may pose problems for professionals and clients. Moreover, clients may not be making a "knowing, voluntary, and intelligent" waiver (or whatever the standard is for that field).

Who Will Challenge, and How?

Because problem-solving courts are so popular, there have been few challenges. The main source of dissent comes from judges, prosecutors, and defense counsel, all of whom question the ethical implications for the bench and bar and constitutional issues for defendants. These challenges have come primarily in the form of lectures and law review articles.

Some prosecutors, law enforcement, and victims' rights groups perceive drug or DUI courts as a "slap on the wrist." In reality, most courts have jurisdiction only over nonviolent, first-time offenders. This reality is attributable to federal funding requirements and responsiveness to public safety concerns. Notably, participants in problem-solving courts may be *more* likely to serve time; most of their offenses, if handled outside the problem-solving court, would not warrant jail time. The challenges raised from the law enforcement quarter are based on public policy and have little bearing on case outcomes but may dictate whether a problem-solving court is implemented at all.

What would a legal challenge look like? Defendants waive their right to appeal. However, there are some limited grounds on which an appeal may be made. It has been suggested[25] that an ethics issue could be framed on appeal as a challenge to the "knowing, voluntary, and intelligent" standard that applies to decisions made by defendants. While this challenge is most commonly made in the context of plea agreements, it might apply to a problem-solving court process.

Conclusion

"Most of the evaluations of [drug courts] to date have been conducted from a social work, psychology, therapy, and/or policy perspective and do not adequately address the legal issues presented."[26] Thus, those in the business of evaluating and researching drug courts and their problem-solving counterparts in other areas (domestic violence, DUI, gun, mental health, etc.) need to be aware of the ethical implications for professionals and the constitutional issues for clients.

[20] Hora et al., p. 522.

[21] Hora et al., p. 521, providing as an example, Order Granting Revocable Release In the Community Court (Court Probation) Municipal Court for the San Leandro-Hayward Judicial District, County of Alameda, State Of California, fn. 453.

[22] ABA Model Rule 3-3.1

[23] Hora et al., p. 477.

[24] Indeed, one of the first drug courts was created by Janet Reno, then a prosecutor in Dade County, Florida.

[25] Conversation with Mae Quinn, November 2002.

[26] Mae C. Quinn, "Whose Team Am I on Anyway? Musings of a Public Defender about Drug Treatment Court Practice," *NYU Review of Law and Social Change* 26, no. 37 (2000/2001): fn. 6.

There are limits to how much intrusion society wants from courts and to how much courts may intrude.[27] Problem-solving courts serve a previously unfulfilled purpose that can make life better for everyone. However, even if courts could solve every problem, ethical obligations may prevent the players from doing so, at least under the current problem-solving court models and ethics rules of the various professions involved.

[27] Much court reform in the middle of this century focused on avoiding paternalism. The old "conciliation courts," one of the first experiments in court intervention, were failures. Today, we are shocked by such displays of judicial paternalism, attorneys deciding issues in the best interests of their adult clients, and court-connected intrusion. J. Herbie DiFonzo, "Coercive Conciliation: Judge Paul W. Alexander and the Movement for Therapeutic Justice," *University of Toledo Law Review* 25 (1994): 535.

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Family-Friendly Courts

Carol R. Flango

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_FamJus_Trends02_FamFriendPub.pdf

To provide effective service to the public as well as to cope with high caseloads, the court system must make itself friendlier and more accessible to families who need to maneuver through it. Family-friendly courts, which can be of either special or general jurisdiction, view families not as cases to be disposed of, but as consumers entitled to delay-free and competitively priced services. Family-friendly courts provide access to services that heal and protect children and their families whenever possible, and they resolve cases in a timely and efficient manner.

Some of the approaches available for family-friendly courts include special models of case assignment (e.g., one family/one judicial officer, one family/one treatment team), innovative models of case coordination, and effective coordination of both court-based and social services for families.

Innovative Models of Assigning Cases Involving a Family

One-Family/One-Judicial-Officer Model

A single judicial officer can become familiar with the details of each family's crisis and better address the family's needs and foresee difficulties. Families might more readily obey court orders if they know they would have to appear before the same judicial officer. On the other hand, concern has arisen that a judicial officer's familiarity with a family and its issues will lead to prejudgment and that one judicial officer may not have the expertise to deal with all the issues. In Bend, Oregon, general jurisdiction circuit court judges carry a general caseload but are also responsible for coordinating a limited number of family law cases. One judicial officer is assigned to a family and hears all matters, civil and criminal, related to that family, such as domestic violence, dissolution, substance abuse, criminal proceedings, and children's welfare. Because of their general experience, these judges have proved able to handle the diverse caseload. Motions to recuse judges based on over-familiarity and possible prejudice have been rare.

The One-Family/One-Judicial-Officer/ One-Treatment-Team Model

King County (Seattle), Washington, uses a team approach to oversee cases involving families in multiple court proceedings. The multidisciplinary team consists of a family court judge, a commissioner, and a case manager. The case manager develops a case profile from a review of active and inactive cases involving the family, including existing orders, reports, investigations, services, and pending hearing dates. After completion of the profile, the team reviews the case to see if it qualifies for special case management.

In Wisconsin and some other states, commissioners decide uncontested cases and narrow issues in contested cases, thereby saving valuable judicial time. Such a pragmatic approach may seem to run counter to the one-family/one-judicial-officer model. Nevertheless, the American Bar Association urges both the use of a family court and the use of hearing officers, mediators, court social workers, and other court personnel to handle numerous tasks currently performed by judges.[1]

Innovative Models of Coordinating Cases Involving a Family

Case Coordination: Sharing Information

In Miami, case managers and other staff at the family court and the domestic violence court coordinate cases that

[1] American Bar Association, *America's Children at Risk: A National Agenda for Legal Action* (Washington, DC: ABA Presidential Working Group on the Unmet Needs of Children and Their Families, 1993): 54.

affect both courts. Judicial officers in each court are informed of other cases or actions involving the parties appearing before them. For example, the Miami-Dade County Domestic Violence Court obtains information on related cases from the restraining order petition prepared by an intake counselor from a personal interview with the "client" and from searches of civil, family, and criminal court databases. In addition, specialized court administration staff members help clients prepare petitions for restraining orders, refer domestic violence petitions to social services available in the community, and consider safety planning. This model may require organizational, staffing, and data management changes, but it can be effective in addressing domestic violence issues coming before the court through its civil, family, and criminal divisions.

Case Coordination: Ensuring Continuity in Legal Representation and Using CASAs

Design of a family-centered court should address whether continuity of nonjudicial actors who come in contact with a family (e.g., prosecutors, public defenders, and court-appointed attorneys) is important in a case and whether one representative should participate in all of the proceedings involving a single family. For example, should a guardian ad litem who represents a child in juvenile court also represent that child in criminal court? In St. Paul, Minnesota, one prosecutor is responsible for all child abuse and neglect cases in the juvenile division and also oversees the attorneys who prosecute criminal charges that involve the same children as victims in the criminal division.

Court-appointed special advocates (CASAs) assist children in court in two ways: as investigators and as advocates. In King County, Washington, the court, through its CASA program, obtains the information it requires to determine which services are needed for children and how these services can be coordinated. With ongoing CASA assistance, the court is appraised of the effectiveness of its orders and case supervision. If a subsequent petition of dependency is filed, the CASA continues to represent the child and may be appointed in that action, as well.

Case Coordination: Using a Courthouse Facilitator

Several courts use trained paralegals as "family law facilitators." These courthouse facilitators do not offer legal advice but provide information. Many times they assist the large number of litigants who are not represented by an attorney (pro ses) in family law cases. Law facilitation requires a wide range of services from instructing court clients on which legal forms are needed to providing information on how to initiate or respond to a marriage dissolution. Facilitators also provide information about hearing schedules and ways to improve pertinent court- or community-sponsored services and resources. Family law facilitators help a court to be significantly more efficient. Addressing basic procedural questions before the hearing date should lead to fewer continuances of scheduled hearings. More adequate self-representation should result in higher-quality judgments and provide more balance to proceedings when an attorney represents the other party.

Case Coordination: Using Family Group Conferencing

This model was first used in New Zealand, where the approach was legislated in 1989 to address child welfare and youth justice issues. Courts that use this approach (the family court in Bend, Oregon, and the children's court in El Paso, Texas) have a multidisciplinary team. This team, preferably with the family's input, develops a comprehensive plan based on family needs and interests. El Paso's family group conferencing program, Familias Primero, regularly works with families to establish treatment plans, resolve problems, and assure the safety of children when reunifying families.[2]

Innovative Methods of Coordinating Services to Families

The court's role in providing and coordinating services involving children and families is expanding, not because courts are assuming responsibilities once held by child welfare and social service agencies, but because they now recognize the need for coordination across courts and agencies. State legislatures often impose a responsibility on courts to see that their services are delivered, and, indeed, federal law calls on courts to monitor social service agencies.

Coordinating Services: Using Liaisons

Several models of coordination between courts and social service agencies are in use. In Delaware Family Court, for example, social workers from the Department of Services to Children and Families are located in the court to coordinate the agency's activities. Representatives from social service agencies work at the court in Louisville, Kentucky.[3] Each judicial officer has a social worker on staff in the courtroom to assist in making determinations, as well as to link families to social services and provide other nonlegal assistance.

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[2] *The El Paso, Texas, 65th Judicial District Children's Court: Evaluation of Model Court Activities* (Reno, NV: National Council of Juvenile and Family Court Judges, 2002).

[3] In the November 5, 2002, election, the Kentucky electorate overwhelmingly approved the family court experiment and ratified the need for family courts by a ratio of 4 to 1. Chief Justice Joseph Lambert noted, "It would appear there's a mandate for family courts. . . . The highest priority will be (in Kentucky) family courts."

Coordinating Services: Reaching Out to the Community

Coordination may also occur at the community level with both courts and social service agencies involved as active participants. Jackson County, Oregon, is a statewide leader in the comprehensive integration of services. In Jackson County, a "one-stop shop" houses 17 agencies and brings the local agencies together to work with family cases. Of course, not all 17 agencies are involved in each family's case, but the family court, through its court coordinator, is an active participant with these agencies. The court coordinator attends team meetings to provide information on court proceedings, participates in assessing whether additional services might be needed, and carries information back to the court. According to the court's administrator, "The family is our focus, not the court, not the court staff. We want to be flexible. We'll facilitate and coordinate when appropriate, otherwise not."[4]

Conclusion

A family-friendly court provides an effective judicial response to problems between family members. Courts need to make a real commitment to families to ensure not only that their cases are heard and resolved, but also that the problems of families and children are actively addressed rather than exacerbated. Family-friendly courts strive to treat families efficiently, to coordinate the delivery of services, and humanely, to minimize the strain of the court process.

[4] Jim Adams, Jackson County, Oregon, Trial Court Administrator.

ADDITIONAL RESOURCES

"Family Court State Links." State-by-state list of resources and online articles regarding family court programs. www.ncsconline.org/WC/Publications/KIS_FamCTStateLnksPub.pdf

Casey, Pamela, and William E. Hewitt. *Court Responses to Individuals in Need of Services: Promising Components of a Service Coordination Strategy for Courts.* Williamsburg, VA: National Center for State Courts, 2001. (KF 8740.C37 2001)

Flango, Carol R., Victor E. Flango, and Ted Rubin. *How Are Courts Coordinating Family Cases?* Williamsburg, VA: National Center for State Courts, 1999. (KF 505.5.F58)

Uekert, Brenda, Ann Keith, and Ted Rubin. *Integrating Criminal and Civil Matters in Family Courts: Performance Areas and Recommendations.* Williamsburg, VA: National Center for State Courts, 2002. (KF 505.5.U35 2002)

Teen Courts—A Juvenile Justice Diversion Program

Madelynn M. Herman

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_JuvJus_Trends02_TeenPub.pdf

Teen courts, also known as youth or peer courts, are considered one of the fastest growing juvenile prevention and intervention programs in the country. They are rapidly gaining popularity as an alternative to juvenile justice and are considered a primary diversion option for young offenders in the juvenile justice system. Teen courts offer an adjudicatory venue in which nonviolent and, usually, first-time juvenile offenders are sentenced by their peers.

In 1994 there were 78 youth or teen courts operating. As of August 2002, over 900 youth court programs were operating in 46 states and the District of Columbia.[1] Even though teen courts came to national prominence in the 1990s, the idea of youth-operated courts has been around much longer. Even though the exact date and location of the first teen court program has not been conclusively established, according to Jeffrey Butts in "The Impact of Teen Court on Young Offenders," similar programs have existed for at least 50 years. In the late 1940s, Mansfield, Ohio, had a youth-operated "Hi-Y" bicycle court that met on Saturday mornings to hear cases of minor traffic violations by juveniles on bicycles (*Mansfield News Journal,* May 16, 1949). Another early teen court is the Grand Prairie, Texas, Teen Court Program, which is reputed to have started in 1976. There are also anecdotal reports of a teen court that began operating in Horseheads, New York, in July 1976. The Odessa Teen Court program in Odessa, Texas, appears to be the most widely known teen court and is regarded as a national model by many advocates.

The Teen Court Concept

Teen courts are generally used for younger juveniles (ages 10 to 15), those with no prior arrest records, and those charged with less-serious law violations (e.g., shoplifting, vandalism, or disorderly conduct). Typically, young offenders are offered teen court as a voluntary alternative to the traditional juvenile justice system. In teen courts, youths charged with an offense can forgo the formal hearing and sentencing procedures of juvenile courts and participate in a sentencing forum made up of a jury of their peers. These courts offer youth the opportunity to learn valuable life lessons and coping skills while promoting positive peer influence for the youth defendants and volunteers, who play a variety of roles in teen court. Most teen courts are funded by a combination of grants and local funds from civic groups or through school district and municipal court budgets.

State Laws Governing the Use of Teen Courts

The number of states passing some type of enabling legislation for teen courts has steadily increased over the last ten years. States have passed both specific as well as broad legislation regarding teen court programs. Twenty of the 45 states with teen courts have no legislation to govern them. Of the 25 states with legislation, only 9 have comprehensive legislation.[2] Teen court legislation includes a variety of features. Some common legislative practices and provisions in state teen court statutes include program names; types of cases; establishment of, and court involvement in, teen court programs; rights; parental involvement; teen court participants; dispositional/sentencing options; legislative funding; and liability limitations/immunity.

- **Adjudication-Authorized States**. Alaska is the only state where state law sets procedures and eligibility for

[1] "September Is First National Youth Court Month," *OJJDP News @ a Glance* 1, no. 4 (July/August 2002).

[2] Michelle E. Heward, "Teen Court Legislation in the United States," *In Session* 2, no. 2 (Spring 2002).

teen court operations and authorizes teen courts to determine guilt or innocence.

- **Regulated States**: In California, Colorado, Iowa, Mississippi, North Carolina, Oklahoma, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming, state law determines funding, case eligibility, confidentiality, the range of sentencing alternatives, or other requirements.
- **Specified Diversion States**: In Arkansas, Florida, Illinois, Kansas, Minnesota, New Mexico, and Rhode Island, teen courts are specifically mentioned by state law as a possible juvenile diversion alternative, but the details are left to the discretion of the local jurisdictions.
- **Unspecified Diversion States**: In Alabama, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, and Virginia, teen courts are not mentioned by state law, but may be available as a program alternative for certain young offenders.[3]

Administration of Teen Court Programs

Teen court programs are operated and administered by a variety of different agencies in a variety of ways.

- **Juvenile Justice System-Based Programs**. These programs are administered directly by juvenile courts or juvenile probation departments.
- **Community-Based Programs.** These programs are administered by law enforcement agencies or private/nonprofit organizations.
- **School-Based Programs**. These programs offer teachers and school administrators with an alternative disciplinary action that can be used in place of suspension.

In 1998 the most common administrators of teen court programs were local court or probation departments (36 percent), private agencies (24 percent), and law enforcement agencies (12 percent).[4]

Teen Court Models

Four different program models also exist for teen courts. These models vary greatly in their case-handling procedures, courtroom models, and the sanctions they use to hold the juvenile offender accountable. Program characteristics are as follows:

- **Adult Judge Model.** An adult serves as judge and rules on legal terminology and courtroom procedure. Youth serve as attorneys, jurors, clerks, bailiffs, etc.
- **Youth Judge Model**. This model is similar to the adult judge model, except youths serve as judge.
- **Youth Tribunal Model.** Young attorneys present the case to a panel of three youth judges, who decide the appropriate disposition for the defendant. A jury is not used.
- **Peer Jury Model**. This model does not use youth attorneys; the case is presented to a youth jury by a youth or adult. The youth jury then questions the defendant directly.

Forty-seven percent of teen courts used the adult judge model, 12 percent used the peer jury model, 10 percent used the tribunal model, and 9 percent used the youth judge model. The remaining 22 percent used more than one case-processing model.[5]

Effectiveness of Teen Court Programs

In October 2000, Jeffrey Butts and Janeen Buck stated in "Teen Courts: A Focus on Research" that many jurisdictions report that teen court increases young offenders' respect for the justice system and reduces recidivism by holding delinquent youth accountable for what is often their first offense. They further state that a teen court may be able to act more quickly and more efficiently than a traditional juvenile court. In subsequent research by Jeffrey Butts in April 2002, the rate of recidivism for juveniles in teen court was compared with that of similar youth handled by the regular juvenile justice system.[6] He found that in three out of the four youth courts studies, the six-month recidivism rate for youth court was lower than that of the comparison group. Mr. Butts further states that the findings of this project indicate that teen courts may be preferable to the normal juvenile justice process in jurisdictions that do not, or cannot, provide mean-

[3] Jeffrey A. Butts, Janeen Buck, and Mark B. Coggeshall, "The Impact of Teen Court on Young Offenders," *Urban Institute Research Report* (April 2002).

[4] Jeffrey Butts, Dean Hoffman, and Janeen Buck, "Teen Courts in the United States: A Profile of Current Programs," *OJJDP Fact Sheet* (October 1999).

[5] *Ibid.*

[6] Jeffrey A. Butts, Janeen Buck, and Mark B. Coggershall, *The Impact of Teen Court on Young Offenders* (Washington, DC: Urban Institute Research Report, 2002).

ingful sanctions for all young, first-time offenders. And in jurisdictions that do provide meaningful sanctions and services for these offenders, youth court may still perform just as well as a more traditional adult-run program.

Conclusion

Teen courts are a positive diversionary alternative for juvenile first-time offenders. On June 9, 2002, the Executive Committee of the American Probation and Parole Association adopted a resolution in support of the formation and expansion of youth court programs. At the very least, this promising approach to juvenile justice creates an improved perception of justice by our young people, fosters the ability of teens to learn from their mistakes because of early intervention, and educates them about the judicial process.

Resources

The National Youth Court Center's (NYCC) Web site serves as an information clearinghouse and provides training and technical assistance to youth court programs in the United States. The NYCC maintains an e-mail group for youth court coordinators and other interested individuals for sharing ideas and information. If you are interested in being added to this e-mail group, please e-mail nycc@csg.org.
www.youthcourt.net

Dunlap, Karen L. "Youth Court Funding: Where to Look and How to Obtain Results." *In Session* 2, no. 4 (Fall 2002).

Heward, Michelle E. "Teen Court Legislation in the United States." *In Session* 2, no. 2 (Spring 2002).

"Youth Courts—Young People Delivering Justice." ABA Road Maps Series, March 2002.

Butts, Jeffrey A., Janeen Buck, and Mark B. Coggershall. *The Impact of Teen Court on Young Offenders.* Washington, DC: Urban Institute, 2002.

Goodwin, Tracy M. *National Youth Court Guidelines.* National Youth Court Center, 2000.

Butts, Jeffrey A., and Janeen Buck. "Teen Courts: A Focus on Research." *Juvenile Justice Bulletin* (October 2000).

Butts, Jeffrey, Dean Hoffman, and Janeen Buck. "Teen Courts in the United States: A Profile of Current Programs." *OJJDP Fact Sheet* (October 1999).

Godwin, Tracy M. *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs.* Lexington, KY: American Probation and Parole Association, 1998.

Nessel, P. A. *Teen Court: A National Movement*. Technical Assistance Bulletin Number 17. Chicago, IL: American Bar Association, Division for Public Education, 1998.

"Teen Courts: Executive Summary." Court Information Database, National Center for State Courts.

DUI Courts

Ann L. Keith

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_SpePro_Trends02DUI_Pub.pdf

The high incidence of crimes committed while under the influence of alcohol, including driving under the influence, has prompted several jurisdictions to develop sobriety or DUI courts. The mission of sobriety and DUI courts is "to make offenders accountable for their actions, bringing about a behavioral change that ends recidivism, stops the abuse of alcohol, and protects the public; to treat the victims of DUI offenders in a fair and just way; and to educate the public as to the benefits of Sobriety and DUI Courts for the communities they serve."[1] Common characteristics of sobriety and DUI courts include intense alcohol addiction treatment and heavy court supervision, with jail sentences as a last resort.

Applying the drug court model to DUI cases is a proactive response to the problem of DUI repeat offenders. DUI courts provide offenders with treatment and close judicial supervision, while still holding them accountable for their actions. However, several policy issues may create obstacles that prevent the establishment of DUI courts. Unlike drug offenses, DUI offenses are *not* perceived as "victimless" crimes because public safety is more of an issue, and community impact must be kept in mind when designing a DUI court system. Monitoring DUI offenders is more difficult than monitoring drug court participants because alcohol goes through the body's system quickly and is harder to detect than drugs. Alcohol is also legal and easier to obtain than drugs. Another criticism of the drug court/DUI court model is that judges are more involved with defendants, so it is more difficult for them to remain impartial in sentencing. Judges need to praise and sanction defendants, but must avoid getting so involved that their impartiality is at risk. Sanctions may appear to be coercive because judges may have to tell a defendant where to live or where to work. Judges may set such guidelines to some extent, but this role goes well beyond the traditional judicial function. Likewise, sanctions that require defendants to use prescription drugs, like REVia and Antabuse, or require invasive treatments, like acupuncture, may be perceived as coercive and beyond the scope of judicial authority.

To remove these obstacles, a DUI court's strategy should include public and court-wide education that emphasizes the proactive nature of the program and the reduction of recidivism. Communities must be aware that intensive treatment of alcohol abuse can reduce the number of DUI offenses. To provide effective intervention and treatment, courts must use a range of available treatment programs available in communities, like the Alcoholics Anonymous (AA) 12-step program, long-term residential treatment centers, and pharmacological treatments.

This article describes examples of DUI court programs that have been developed, many in conjunction with already established drug courts.

Bakersfield, California

The Bakersfield Municipal Drug Court extends its services to multiple drunken driving offenders. The drug court is a post-plea court. Participants appear before the court weekly for the first three months of the program, twice a month for the next three months, monthly for two to three months, and then weekly for the last month of the program. Once the program is completed, participants must return once a month for three months. The drug court staff assesses participants and refers them to various community-based treatment providers based on individual needs. Participants also submit to urine tests for alcohol and drugs. After complet-

[1] Jeff Tauber and C. West Huddleston, *DUI/Drug Courts: Defining a National Strategy* (Washington, DC: National Drug Court Institute, 1999).

ing the program, the court deletes any fines and orders mandatory minimum sentences. The court will usually allow work release, electronic monitoring, or other alternatives to jail time.

Bernalillo County, New Mexico

The Bernalillo County DWI Court works with the county's drug court and is a comprehensive, court-supervised treatment program for alcohol defendants. The program is voluntary and requires regular contact with a probation officer as well as regular court appearances. Subsidized treatment includes both individual and group counseling, random drug and alcohol testing, acupuncture, and wellness education. Education, employment skills, and job placement services are also provided on an individualized basis. Participants are required to complete 20 hours of community service and are offered aftercare treatment and a mentorship program after program completion.

Butte County, California

The Butte County Superior Court assesses each DUI offender at the time of sentencing. The judge will consider the number of prior DUI convictions, blood alcohol levels, the pattern of alcohol use, and other alcohol-related offenses. Each sentence includes mandatory attendance at AA meetings, a test-and-search clause, frequent court reviews, possible referral to residential treatment, and possible ingestion of Antabuse or Naltrexone. Defendants must keep AA logs, and breathalyzer tests are often used in court during review hearings.

Dona Ana County, New Mexico

The Dona Ana County DWI Drug Court provides a yearlong, outpatient treatment program that includes family members. To qualify for the DWI program, offenders must be arrested for aggravated, multiple DWI offenses but not violent crimes. Offenders are screened, interviewed, and asked to write a personal statement to gain entry into the program. Treatment requires attendance at AA meetings, appearances before the judge once a month, and drug testing at least twice each week for the first two months and randomly thereafter.

Hancock County, Indiana

The Hancock County Superior Court No. 2 is served by three full-time alcohol- and drug-certified probation officers, who manage the alcohol and drug offender caseload. The court designs sentences based on a menu of alternative public safety and rehabilitative programs. Public safety alternatives include jail sentences, electronic home detention, probation, and ignition interlock systems. The rehabilitation alternatives include abstinence, AA meetings, outpatient substance abuse counseling, inpatient treatment, and a jail intervention program providing counseling for those in custody.

Maricopa County, Arizona

The National Highway Traffic Safety Administration (NHTSA) funds the Maricopa County DUI Court. The mission of the program is to reduce DUI behavior in defendants who have a DUI history. Participants must appear in court at least once a month during the yearlong program, where the offender contracts to meet personal obligations, including abstaining from drinking, undergoing substance abuse counseling and treatment, attending AA meetings, reporting to a probation officer, and attending the DUI Victim Impact Panel program. Initially, defendants are given a 60-day "deferred" jail term in addition to any mandatory incarceration. Sanctions for noncompliance include community service, retention in the program, removal from the program, and revocation of probation. After completing the program, participants are placed on minimum supervision probation for a year.[2]

Michigan Sobriety Courts

The mission of the Michigan Sobriety Courts is to treat alcohol addiction with intense treatment and heavy court supervision, with jail as a last resort. Offenders must enter a guilty plea, allowing the court to jail an offender for failing to complete treatment. Participants receive 36 weeks of detoxification, urine, and breathalyzer tests; AA counseling; and group therapy. They must also meet with a probation officer and alcohol counselor once a week and with the judge once a month. In the sobriety court in Novi, participants may retain driving privileges for the first 36 weeks with an ignition interlock system installed at their own expense. Drivers must blow into the device to check their blood alcohol level, and the vehicle will not start if the level is too high.[3]

Anchorage Wellness Court

The Anchorage Wellness Court's mission is to assist municipal misdemeanor alcoholic offenders who want to over-

[2] *Id.*

[3] Jennifer Chambers, "Judges Hope New Program Curbs Alcohol Cases: Offenders Given Intense Treatment Over Jail Sentence," *Detroit News* (March 2, 2001).

come their addiction and achieve lifetime sobriety. A court team oversees the treatment program, and graduates usually receive a reduced sentence on their current case. The wellness court is a voluntary program, and offenders are admitted on a case-by-case basis. Although the wellness court is an individualized program, elements of the treatment plan include undergoing alcohol treatment and counseling; taking Naltrexone; making frequent court appearances; attending AA meetings; undergoing Moral Reconation Therapy; keeping compliance logs for all treatment plan requirements; complying with continued sobriety monitoring (urinalysis); obtaining employment, education, or both; maintaining sobriety for 18 months; and receiving recognition for progress or sanctions for noncompliance.[4]

[4] Anchorage Wellness Court, Alaska Court System. Revised July 19, 2002 available at www.state.ak.us/courts/wellness.htm. *See also,* www.state.ak.us/courts/duict.htm.

2002 Report on Trends in the State Courts

with an Environmental Scan by NCSC and Futurist.com

Updates for 2002

Updates for 2002

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends02_UpdatesPub.pdf

Crime Trends and the Courts

In the 2001 Edition of the *Report on Trends in the State Courts,* the National Center reviewed "Demographics and the Criminal Justice System." Although trends through most of the 1990s had been encouraging, with steep declines in the number of serious crimes and gradual reductions in the rate of annual increase in prison populations, new data in 2001 were less heartening. Demographic shifts in the numbers of youth and the current economic downturn were mentioned as influential factors. A year later, news is still on the gloomy side, with events pointing toward further erosion of the improvements made during the 1990s.

An October 28, 2002, press release from the FBI, summarizing data from *Crime in the United States 2001* (Washington, DC: FBI, U.S. Department of Justice, 2002), indicates that Crime Index Offenses (murder, rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft) increased 2.1 percent from 2000 to 2001, the first year-to-year increase since 1991. To keep this figure in perspective, one should note that the 2001 crime figures are still 10.2 percent less than those for 1997 and 17.9 percent less than those for 1992. Nevertheless, with the economy still shaky and the age group historically at highest risk for committing crime increasing, the odds for short-term improvement in crime rates would appear poor.

Other current developments portend some longer-term problems for courts and the criminal justice system. In particular, state budget conditions (see "Budget Woes and Resourceful Thinking" in the 2002 edition of the *Report on Trends in the State Courts*) threaten many diversionary programs that offer services in areas of mental health, substance abuse treatment, housing, and social services. Many of these interventionary services are not adequately funded in the best of times, and budget cuts will only increase the likelihood that those who might otherwise be served will end up in the criminal justice system.

The field of mental health is illustrative. There, the trend since the 1960s has been to deinstitutionalize the mentally ill, the idea being (rightly) that many of the mentally ill can receive more effective and humane treatment in the community. Governments, however, have become hesitant to provide funding for the community-based programs that were originally expected to replace traditional mental health institutions. Many of the unserved or underserved mentally ill commit offenses for which they are ultimately incarcerated. The result is that the costs for caring for the mentally ill have essentially been shifted from the health care system to jails and prisons—institutions that are even less appropriate for handling the mentally ill than were the traditional mental health institutions and every bit as if not more expensive for the state to support.[1] Budget cuts in the immediate economic climate will only increase the likelihood that the courts and other agencies of the criminal justice system will be burdened with additional cases and associated costs that could have been handled more effectively by diversionary programs in the community.

—Kenneth G. Pankey, Jr.

[1] Elizabeth Daigneau, "Criminal Hospital," Governing.com (September 2002): 55, 55-56.

Judicial Elections: NCSC Ad Hoc Committees

The U.S. Supreme Court's decision in *Republican Party of Minnesota v. White* has led a number of states to reexamine their canons on judicial election campaign conduct (e.g., in Georgia, the Judicial Qualifications Commission has announced it will enforce their canon as written, including the "commit clause," and the Texas Supreme Court appointed an advisory committee). To assist states in responding appropriately to uncertainties surrounding the regulation of campaign conduct, the National Center for State Courts has sponsored two ad hoc committees to support the efforts of judges, lawyers, and community leaders to improve the conduct of judicial election campaigns.

An Ad Hoc National Advisory Committee on Judicial Election Law, which is independent and self-governing (with logistical support from the National Center), was formed in June 2002. The committee has drafted a memorandum outlining its views on the implications of the *White* decision. The committee stands ready to provide information and experienced judgment on the laws governing judicial campaign conduct as requested by individual states.

The independent and self-governing Ad Hoc Advisory Committee on Campaign Conduct was also established in June 2002. The advisory committee's experience and resources are available to official and bar association campaign conduct committees to encourage judicious campaigning and, where appropriate, take steps to correct or speak out against inappropriate conduct.

The National Center for State Courts also requested that each chief justice designate a contact person to monitor the 2002 news articles on judicial elections. The designated "campaign watchers" compiled reports about the judicial campaigns held in their states, which will be circulated to all participating states to help them identify potential campaign issues.

—Ann L. Keith

2002 Report on Trends in the State Courts

with an Environmental Scan by NCSC and Futurist.com

What to Watch

What to Watch

For links to many of the resources cited in this article, set your Web browser to www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends02_WhatToWatchPub.pdf

Globalization and Federal Trade Policies

Globalization, particularly as manifested in expanding international trading arrangements, presents challenges for states and American federalism. As summarized by Mark Gordon, an adjunct fellow at Demos, a New York-based national research and advocacy organization, and an associate professor at Columbia University's School of International and Public Affairs, "A whole series of existing state laws, including rules protecting the environment and consumers, the process states use to procure government services, and programs that provide subsidies for in-state businesses, may be illegal under new international trade regimes such as the World Trade Organization."[1] State policy decisions in realms that have traditionally been clear areas of state authority are becoming subject to interference through federal trade policies. As reported by the National Center's Government Relations Office in September 2002, federal officials, in negotiating new agreements with Singapore and Chile, were not addressing problems that state courts have noted with dispute resolution processes like that in chapter 11 of the North American Free Trade Agreement (NAFTA).[2] The NAFTA foreign investor provisions have been used to attack decisions of legislatures, executive officials, and courts. NAFTA panels have not hesitated to independently interpret the law of the host country (*Metalclad Corp. v. Mexico*[3]), review state jury verdicts and appellate rulings against foreign corporations (*Loewen v. United States*[4]), and seek compensation for a state's prohibition of harmful fuel additives (*Methanex v. United States*[5]).[6] The concern is that under such provisions there will be no way to ensure that investment tribunals will not extend greater investor rights to foreigners than U.S. investors will receive in U.S. courts. The National Center is working with a coalition of state and local agencies to reduce potential problems with dispute mechanisms involving foreign investors in the United States in trade bills comparable to the existing NAFTA model. Other state court interests related to international trade activities include the existing General Agreement on Trade Services (GATS), to which the U.S. agreed in 1994 as part of setting up the World Trade Organization (WTO). GATS covers legal services, and there are ongoing negotiations to "liberalize" licensing practices for foreign lawyers to practice in the U.S.—an arena traditionally regulated by the states.[7]

—Kenneth G. Pankey, Jr.

1 Mark C. Gordon, "Democracy's New Challenge," *State Government News* (September 2001): 17.

2 Edward H. O'Connell, Jr., "Trade Bill," *Washington Update* (September 2002): 1.

3 Notes of Interpretation of Certain Chapter 11 Provisions (NAFTA Free Trade Commission, July 31, 2001); Appellate Court decision (Supreme Court of British Columbia, May 2, 2001); Arbitration award (c. August 30, 2000).

4 Information summary and links provided by the U.S. Department of State (www.state.gov/s/l/c3755.htm).

5 Background provided by the International Institute for Sustainable Development; William Greider, "The Right and U.S. Trade Law: Invalidating the 20th Century," *The Nation* (November 17, 2001).

6 Letter to Chief Justice William H. Rehnquist from Bill Locker, Attorney General of California, and Alan Lance, Attorney General of Idaho (August 2002).

7 Edward H. O'Connell, Jr., "Trade," *Washington Update* (October 2002).

Death Penalty for Juveniles

In August 2002, United States Supreme Court Justice John Paul Stevens ignited hope among death penalty opponents that the Supreme Court might abolish the execution of juveniles on the heels of its abolition of the death penalty for the mentally retarded last term. Justice Stevens released a dissenting opinion after the Court refused to grant a stay of execution for Toronto Patterson, a Texas man sentenced to death for killing three relatives as a seventeen-year-old. Stevens wrote that "it would be appropriate to revisit the issue [of executing juveniles] at the earliest opportunity."[8]Justices Ruth Bader Ginsburg and Stephen Breyer issued a separate dissent indicating their agreement with Justice Stevens.[9]

These public statements notwithstanding, when presented with the question this fall by habeas petition out of Kentucky, the high court on October 21, 2002, denied the petition for a writ of cert filed by Kevin Nigel Stanford[10] for reconsideration of the constitutionality of the execution of juveniles. The Court upheld the constitutionality of juvenile execution in the petitioner's 1989 case, *Stanford v. Kentucky,* 492 U.S. 361 (1989). The denial was over the objection of Justices Stevens, Souter, Ginsburg, and Breyer.

What is the prospect that the juvenile death penalty will be abolished? That determination lies wholly in the hands of the states. The U.S. Supreme Court will need to be satisfied that a critical mass of states have abolished the death penalty for juveniles and that nationwide momentum is apparent before it will find the penalty unconstitutional under the Eighth Amendment's prohibition against cruel and unusual punishment. Since the Court last considered the issue in 1989, Indiana, Kansas, Montana, New York, and the state of Washington have abolished the execution of juveniles. Twenty-one of the 38 states that have the death penalty prohibit the execution of minors beyond the minimum age of 16 as established by the U.S. Supreme Court in *Thompson v. Oklahoma,* 487 U.S. 815 (1998). Five of those require that a minor be at least 17 at the time of his crime to be eligible for execution; 16 require a minimum age of 18. (See the Death Penalty Information Center's discussion of minimum ages at www.deathpenalty.org/juveagelim.html#agechart for more information.) The federal government also prohibits the execution of persons who are under 18 years of age at the time of their crime.

The Court's 2001 term decision regarding mental retardation and the death penalty in *Atkins v. Virginia*, No. 00-8452 (decided June 20, 2002), can be instructive for the prospects for abolition of the juvenile death penalty. The Court in *Atkins* noted that execution of the mentally retarded had been rejected by 18 of 38 states with the death penalty, as well as the federal government.[11] Sixteen of those states had abolished execution of the mentally retarded since the court's 1989 decision upholding the practice in *Penry v. Lynaugh,* 492 U.S. 302 (1989). This substantial rejection was persuasive evidence that such executions violate "evolving standards of decency."[12] The 18 states represented a net gain of 16 since the court last considered the issue in 1989, at which time only two states and the federal government prohibited such executions.

While the numbers of states that prohibit the executions of minors are comparable to the number that prohibited executions of the mentally retarded before *Atkins,* the issue of juvenile executions has not shown as much legislative momentum as the mental retardation issue did in the period leading up to *Atkins.* Unless several more states consider the issue in coming years, a majority of the Court will not feel obligated to revisit the 1989 decision.

—Holly Shaver Bryant

[8] In re Toronto M. Patterson, No. 02-6010 (August 28, 2002) (Justice Stevens, dissenting)

[9] In re Toronto M. Patterson, No. 02-6010 (August 28, 2002) (Justice Ginsburg, dissenting)

[10] Stanford v. Parker, No. 01-10009 (cert. denied October 21, 2002)

[11] Atkins v. Virginia, 536 U.S. ___ (2002) (slip op. at 9-10).

[12] Atkins v. Virginia, 536 U.S. __ (2002) (slip op. at 6), quoting Trop v. Dulles, 356 U.S. 86, 101 (1958).

Unscientific Evidence

Scientific means for identifying individuals continue to advance (see "Introduction to Biometrics" in this edition of *Trends*). The technologies for modern biometrics can identify one person from among millions, if not billions. The admissibility of identification evidence obtained by means of DNA analysis or other biometric technologies is subject to the strict standards applicable to scientific evidence. As Justice Stephen Breyer has noted, "[T]here is an increasingly important need for law to reflect sound science."[13] Ironically, courts routinely accept a type of identification evidence whose collection by most law enforcement agencies does not begin to stand up to scientific scrutiny—eyewitness identification. In the United States, seventy-five thousand people every year become criminal suspects based upon eyewitness identification. Studies of wrongful convictions—cases in which a defendant was later exonerated by DNA testing—have shown the most common cause to be eyewitness error.[14]

Research conducted more than 15 years ago demonstrated that simple, low- (or no-) cost changes in how eyewitness evidence is obtained can dramatically reduce rates of error. The U.S. Department of Justice has acknowledged the superiority of these newer processes,[15] yet the majority of law enforcement operations have taken no steps to adopt the superior processes. This state of affairs reflects a culture clash between legal and scientific approaches. While those in scientific fields are taught to question the methods by which knowledge is acquired, the legal system takes its methods for granted. Precedent and convention rule; experimentation and change are deeply mistrusted. At some point, courts will probably have to force the issue by holding evidence obtained via eyewitness testimony to higher standards. Then, police and prosecutors will be required to improve their methods or face the exclusion of eyewitness testimony.

—Kenneth G. Pankey, Jr.

[13] Stephen Breyer, "Science in the Courtroom," *Issues in Science and Technology Online* (Summer 2000).

[14] Atul Gawande, "Investigations Under Suspicion," *The New Yorker* (January 8, 2001), at 50.

[15] Technical Working Group for Eyewitness Evidence, *Eyewitness Evidence: A Guide for Law Enforcement* (Washington: DC: Office of Justice Programs, U.S. Department. of Justice, 1999).

About the Authors

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An Environmental Scan for the State Courts, 2002

Prepared by the National Center for State Courts and Futurist.com

Appendix

Located online at www.ncsconline.org/WC/Publications/KIS_CtFutu_EnvScan02_Pub.pdf

Knowledge and Information Services Office
and Glen Hiemstra of Futurist.com

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SJI State Justice Institute

National Center for State Courts 1971

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An Overview

Courts have two choices when it comes to the future: wait and react or anticipate and plan. The National Center for State Courts (NCSC) helps courts to prepare today for what is to come tomorrow through an *Annual Report on Trends in the State Courts.* A key element of producing this report is regular environmental scanning.

What Is Environmental Scanning?

Environmental scanning attempts to identify events, trends, and developments, or drivers, shaping the future. These "ETDs" are usually found in published material but may also be explored through interviews or focus groups of subject matter experts. Scanning focuses on both dominant issues, as indicated by the amount of attention they receive, and leading edge developments, which may be, for the moment, receiving little attention. Scanning especially involves trying to understand which issues might take a court beyond its current ways of doing things (or "paradigms").

Regular scanning is essential for tracking issues as they become more important and for screening anomalous issues. Scanning is similar to an academic literature review, but the issues noted tend to be more focused on the enterprise and driven by current events. Both breadth and depth are important, as is relevance to the courts.

What a Scan Does and Does Not Do

An environmental scan report does not tell an organization what it ought to do, but it does bring two primary values to planning. First, the scan will suggest the nature of the world in which the organization will be deciding what future it wants and what it needs to do. Second, a good scan give the organization a wider angle and longer-range view of the future, stretching both strategic and creative thinking beyond normal boundaries. That is our goal with the NCSC environmental scan.

There are, of course, pitfalls. One obvious pitfall is making misleading or incorrect assumptions about the future. A second is that a general scan may not reflect local conditions.

More serious pitfalls can emerge when the scan report itself encourages misleading views of the planning enterprise. For instance, allowing scanning to become an end in itself. An organization assumes that the answer is "out there" somewhere in the scanning, but the process never ends because the answers never appear.

Another and somewhat deeper problem is basing predictions on past and current trends. Hence, most predictions associated with scanning suggest that in the future there will be more of some things, for example, crime, and less of other things, for example, money. Thus, leaders develop elegant plans to create a more efficient past, rather than a new future.

Objectives of the Scan

1. Provide a comprehensive overview of a variety of trends, including social, scientific and technological, economic, political/governmental, and professional.

2. Provide analysis of implications for society.

3. Provide preliminary analysis of implications for the justice system.

4. Provide rich and current information for use in the futures studies curriculum.

5. Provide a resource to the clients of NCSC.

6. Provide a resource to the National Center's Board of Directors for use in long-range strategic planning.

NCSC Environmental Scan Template

The template suggests ongoing scanning across three broad domains:

General Future – a broad view of population demographics, science and technology, politics and government, economics, the environment, and cultural and global trends

Court Enterprise – a view of what courts deal with in criminal, civil, juvenile and family matters; science and technology; and the five areas that make up the Trial Court Performance Standards

Court Management – a view of how courts work, including juries, personnel, budget, facilities, technology, community and customer service, ethics, vision and values, and information management

Within each domain area, there are multiple subjects, each of which should include:

Sources – specific sources for particular items and example sources for further investigation, easily accessible online by double-clicking on the domain name in the first column.

Present Conditions – a brief summary of the present situation with regard to the domain being addressed.

Probable Future: Events, Trends, Developments – an overview of both general and specific future developments.

Urgency, Implications – a judgment about the urgency of the development across three time spans and implications for the justice system.

Event Horizon – reported within the column on Urgency and Implications are three horizons:

- *Over the Horizon*: issues that are far in the future and that specialists are aware of, but otherwise no one is paying attention (long term, 7 years or more)
- *On the Horizon*: issues that are being noticed, but no actions are being taken (medium term, 3-6 years)
- *On the Agenda*: issues are capturing the attention of decision makers or are being actively pursued in legislative, regulatory, and judicial bodies (short term, 0-2 years)

Summary of Key Trends - Each report cycle will include a brief list or summary of key trends or challenges.

The environmental scan is intended first as an online resource although individuals are welcome to download the report. Accessed online, the scan provides easy navigation between individual subject areas and resources cited at the end of the report. In addition, links are provided within selected subjects to articles in the 2002 edition of the National Center's *Report on Trends in the State Courts* that expand upon the contents of the scan and make their immediate relevance to the courts clearer.

The environmental scan is not intended to be static in nature but to evolve over time consistent with new developments. At least one scanning report will be released each year, with prior reports being available in an archive. Constituent contributions and feedback are encouraged both with respect to existing subjects under the three domain areas and the addition of new subjects. Suggestions

for how the scan might be made more user friendly are also appreciated. The volume and quality of input from the field of court administration will directly affect the frequency with which the scan is updated and otherwise modified. Information and comments may be mailed to:

Scanning and Trends
Knowledge and Information Services
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

or may be submitted using an online form at www. ncsconline.org/D_KIS/Trends/Submit_Trend_form.html.

Input on more than one topic is best submitted separately.

Environmental Scan Results

GENERAL FUTURE DOMAINS

POPULATION DEMOGRAPHICS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Real population decline	"A change has occurred in human behavior that is as revolutionary as it is unheralded. Around the world, fertility rates are plummeting. According to one account, women today on average have just half the number of children they did in 1972. In 61 countries, accounting for 44 percent of the Earth's population, fertility rates are now at or below replacement levels."[1] The primary explanations for these declines are economic development, communications, and family planning.	Japan will go into population decline in 2005. Russia is already there. Most countries of Europe, China, Canada Australia, and even the U.S. will approach real population decline over the next two decades, until the entire world is likely to be shrinking by 2025. Only population migration will maintain labor force size in countries with real population decline.	*Over the Horizon* Economic dislocations and uncertainties abound, as the world faces an unprecedented situation in modern times…fewer customers each year. Many disputes will arise about immigration, migration, world labor movement, borders, all mixed in with contemporary concerns about border security.
• Aging population[2]	In the U.S., with state variations, about 10-13% of the population is over 65 in 2002. The global economy faces a transition of unprecedented dimensions caused by rising old-age dependency and shrinking working-age populations among the world's largest economic powers.	The percentage of people living to 65 is increasing, as is longevity after 65. By 2020, most states will have a population with 20-25% over age 65.	*On the Horizon* Implications include challenges to retirement and pension law, court personnel policies. Government funding will reach a crisis point as the need to support a dependent generation in the midst of global economic impacts comes to the foreground.
• Generation Y comes of age[3]	Baby boomers born between 1946 and 1964 numbered about 72 million in the U.S. Generation X, born between 1964 and 1979, was much smaller, at about 18 million. The next generation, Generation Y born between 1979 and 1994, approaches the boom in size, at about 60 million.	Some of the general decline in crime during the decade of the 1990s can be attributed to the decline in the youth population. Going through the next decade, the U.S. will see a shortage of entry level workers, balanced by immigration, and an increase in the real numbers of young people, until in 2007 there will be nearly as many teens in the population as at the peak of the baby boom.	*On the Agenda* Generation Y is a smaller percentage of a larger population than was the baby boom, but it is a large group numerically. Social institutions that are impacted by youth, from schools to juvenile courts will see increased demand for service. If the concomitant trend to treat youth as adults in the criminal justice system continues, there will be a corresponding impact on adult courts and prisons, even without a change in the percentage rate of crime.

POPULATION DEMOGRAPHICS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Increasing Hispanic population[4]	Hispanic immigrants, primarily from Mexico and Latin America, comprise 13% of the U.S. population and represent the fastest growing minority population.	Immigration of Spanish-speaking peoples will continue to swell the proportion of this minority within the U.S. population.	*On the Agenda* There will be continued expectations for the courts to serve people with Spanish as their first language. Other languages must be served as well, increasing demands for translation services.

POPULATION DEMOGRAPHICS

1 Sohail Inayatullah, "Aging Futures: From Overpopulation to World Underpopulation," *Australian Business Network Report* 7, No. 8 (October, 1999), 6-10.

2 Center for Strategic and International Studies (CSIS), "Meeting the Challenge of Global Aging" (Panel Report, 2002).

Glen Hiemstra, "Population Explosion Ends in a Whimper," Futurist.com (2001).

3 "Generation Y," *Businessweek* (1999).

4 "Amexica," *Time Magazine,* special issue (June 11, 2001).

ECONOMIC CONDITIONS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• The long boom[5]	There is a divergence of evidence and opinion on the future of the economy in the Spring of 2002. One set of indicators and opinions suggests that the downturn of the previous two years is a temporary adjustment in an otherwise positive future for economic growth. Prominent among such voices were Schwartz and Leyden and their view of the "long boom." In this view the years 1980-2020 will constitute an unprecedented time of global economic opportunity and prosperity, driven especially by two megatrends: technology revolution, and an ethos of global openness. The question is whether the past two years represent a correction of the excesses of these trends, or a more significant turn.	As the world regains its economic footing post-September 2001 and the global recession ends, relatively robust growth will reemerge. The pace of technology development will continue at accelerating rates, and when business investment picks up, so will deployment of new and transformative technologies, especially in biology, life sciences, and energy technology. Growth rates of 5% worldwide will return and be more characteristic of the next two decades.	*On the Horizon* The U.S. economy grew at an annual rate of 5.8% in the first quarter of 2002, indicating that the long boom thesis had legs. If this thesis holds and the long boom continues to be real while the recession is temporary, then current federal and state budget woes will be temporary, on the order of two to three years, as government budgets lag economic performance. Thus courts may expect temporary budget shortfalls, but the prospect of relief in two to three years. A long boom economy also portends less crime and smaller or at least slower growing prison populations. At the same time, the global nature of the long boom suggests increases in global criminal associations and activity, as well as the simple involvement of state and local business across global boundaries.
• Synchronized global downturn[6]	The economic downturn of 2000-2002 is a "synchronized" one, as various industries, business investment, countries, and regions, including Japan and the U.S., went into economic slumps, exacerbated by economic and financial imbalances of the 1990s. The terror attacks of 9/11 resulted in a culture of fear. Increased government military spending removes the greater multiplying effect of the "peace dividend," which dominated the 1990s.	The various synchronous economic events and trends suggest that the next decade will be more similar to the 1930s, and the next five years will be ones in which the world teeters on the brink of a global depression. The tipping point could be another major terror attack, and even without that, full recovery could be slow and uneven.	*On the Horizon* Implications of continued global downturn include increased crime, more bankruptcies especially among small businesses, increased pressures on the justice system to be proactive given the likely paralysis of the executive and legislative branches, increased need for community and neighborhood mediation and other sources to decrease the pressures on the official justice system, and pressures on judicial system workforce to produce more work with fewer people, and less money for innovation.

ECONOMIC CONDITIONS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Spending wave continues[7]	Nearly 100 years of financial records and evidence suggest that people spend the most money during a particular time of their lives, approximately the ages 42-48. Assuming a family, this is when the kids are most likely to be teens. Observers of long-wave theories of the economy have noted a correlation between the performance of the economy and the number of people in their peak spending years. Currently the last baby boom wave is going through their peak spending years. Thus, U.S. consumer spending, the core ingredient of economic performance, has continued to climb, despite the recession in business investment. In fact, even in 2001, consumer spending in the U.S. increased 4.9%, 6% in the last quarter alone.	The spending wave will drive a growing U.S. economy at least through the year 2007, when the baby boom peak begins to taper off. Then, depending on the situation with immigrants, who tend to be younger and thus time lag the rest of the population, and also the situation with the global economy, consumer spending may slow, and lead to a slowing of economic growth.	*On the Horizon* Spending wave theory suggests something of a middle ground between the long boom and the synchronous economic downturn. That is, recovery from the short-term recession will be helped by the spending wave, but the decline of the wave as smaller Generation X begins to dominate the 42-48 age group will dampen the long boom.

ECONOMIC CONDITIONS

5 Peter Schwartz, Peter Leyden, Joel Hyatt, *The Long Boom: A Vision for the Coming Age of Prosperity* (Perseus Press, 2000); Katherine Meiskowski, "The Long Boom Is Back," Solon.com (April 30, 2002).

6 "How Far Down," *The Economist* (October 20, 2001), 71; John Hewson and Peter Brain, "We All Fall Down, Review," *Australian Financial Review* (November 2, 2001), 1-2.

7 Harry Dent, *The Roaring 2000's* (Touchstone Books, 1999). *The Great Boom Ahead* (Hyperion Press, 1994).

SCIENCE & TECHNOLOGY	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Nanotechnology	Nanotechnology is the third leg of a triple technology revolution, along with information technology and biotechnology. In simplest terms, nanotechnology means constructing materials at the molecular or atomic level, and in nanoscale size. Research and development breakthroughs are announced almost weekly. Since 1999 dozens of commercial companies have formed, backed by hundreds of millions in investment. Serious applications are expected first in medicine, and in electronics and computing.	"'With the electronics we're talking about, we're going to make a computer that doesn't just fit in your wristwatch, not just in a button on your shirt, but in one of the fibers of your shirt,' says Philip Kuekes, a computer architect at Hewlett-Packard Laboratories. Kuekes and his colleagues are designing circuits based on perpendicular arrays of tiny wires, connected at each intersection by molecular transistors. By the middle of the decade, Kuekes says, Hewlett-Packard will demonstrate a logic circuit about as powerful as silicon-based circuits circa 1969."[8]	*Over the Horizon* Justice system implications, beyond those associated with new business ventures, will focus on information technology. Issues of interest in the nearer term will include imbedded and eventually invisible computing. A decade out, perhaps less will be the development of super surveillance devices. Beginning with "roboflies" and possibly leading to nearly invisible "dust motes" with nanoscale cameras and listening devices, both investigative and privacy issues will be in the forefront.
• Applications of genomics, life sciences, and bioethics	Few developments are more extensively covered by the press and by court observers, promise greater improvements in human well-being, or are so fraught with ethical and legal issues than biotechnology. The list of specific issues associated therein is long, including stem cell research; DNA evidence; cloning; genetically modified foods, animals, and people; genetic screening and discrimination; and so on.	DNA chips and faster DNA-testing methods will make DNA evidence gathering commonplace. Genetic screening for disease risks will become faster, easier, and more widespread. Stem cell research will lead to applications of stem cell therapies, including the banking of biologically created organs and tissues. Longer term, the deliberate genetic design of children will become a possibility and thus an issue.	*On the Horizon* The next several years will see the application of DNA testing to virtually all criminal investigations. There is an immediate need to speed up this process, being addressed by bills before Congress in 2002. There will be disputes about the limits of cloning, the applications of stem cell therapy, equity in medical treatment, and safety of genetically modified organisms. Arcane issues will be raised about the rights of future persons, liminal persons,[9] and artificially created body parts. Biotech medical research and treatment banned in one country but allowed in another will raise issues of international law. (If reproductive cloning is banned in the U.S., and a U.S. couple "conceives" a cloned child in another country, will the child be denied U.S. citizenship or other rights as an illegal life form?) Commercialization of genetic material as real or intellectual property will continue to be issues of contention. In short, the genetics revolution will increase the number and complexity of cases coming to the courts, and challenge court personnel to keep up with the science.

SCIENCE & TECHNOLOGY	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Continued developments in information technology	The information technology revolution continues, a fact somewhat lost on those fixated on the collapse of the first dot com economic model and the overbuilding of the global telecom infrastructure. The doubling curves of performance to price for computer chips, memory systems, data networks, continue to speed up. More and more information is digitized, and more information is digital only. There is no reason to expect these technology development trends to abate.	The next decade will see computing and telecommunication increase in capacity five to seven times. Computers will become imbedded in clothing and the built environment. Many business transactions will involve virtual personalities as intermediaries. Translating phones will be common, as will voice recognition systems and automatic language translation in court. Generations X and Y, which implemented the Web and then grew up with it, will constitute the younger workforce, making much more widespread and natural use of network-based communications.	*On the Agenda* The justice system, including justice workers, nonlawyers, lawyers and judges specifically, the public, and the courts themselves, will confront whether and how to use information technology to more fully transform the delivery of justice. Both long-term strategic planning and short-term IT planning must work in tandem to get maximum potential benefits. Specific possibilities include but are not limited to: • National legal information infrastructure • Virtual hearings and meetings • Multimedia transcripts, legal bundles • Fully accessible case tracking and unified case management • Legal portal for the public as first access point • Multidisciplinary systems and services • Virtual legal teams, international legal teams • Legal diagnostic systems • Online legal discussion and learning • Electronic transcription • Automatic translation • Standards for litigation support systems

SCIENCE & TECHNOLOGY

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POLITICAL & GOVERNMENT TRENDS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• End of government solutions	First in the late 1970s and extending through the 1990s, there was a general turning away, worldwide, from the 20th-century notion that government was the best or primary institution for solving large social problems. This trend has been best described by Peter Drucker and was exemplified most recently by welfare reform. What has been less clear is the answer to the question, if not government, then whom? And in a paradoxical way, during the same time period in a kind of mission creep, both public schools and the courts have been asked to take on a greater role in solving social problems, particularly in relation to youth and families.	The political shift away from assigning social problems to government agencies for solution is likely to continue for the foreseeable future. Nonprofits and other institutions are filling in the gap, as is a call for volunteerism. At the same time, it appears likely that courts may take on an increasing role as the social safety net of last resort.	*On the Agenda* Trial courts are likely to play an increasingly central role within a network of government and social institutions attempting to address societal problems in new ways. Courts are expected to be tough on crime but also to be heavily involved in providing or seeing to the provision of social services. Changes in the roles of courts will require careful study as they have implications for the institution of the judiciary and its place in society and government. With many changes being fueled by federal funds, we must know whether they are the result of conscious policy choices or unconscious reactions to resource availability.[10]
• Politicization of the judicial branch	While judgeships have always been to some degree political, during the recent decade or two there has been increased focus on political affiliation of judges, their stands on single issues, and allegiance to particular political philosophies. This in turn has complicated and in some ways compromised the work of an independent judiciary, as well as limiting the number of qualified people willing to face this volatile climate.[11]	Efforts are being made in many quarters to fight for judicial independence, but the political trend in the other direction is strong. The long-term prognosis is, however, that judicial independence will be maintained.	*On the Agenda* Communicating the need for independence, producing educational materials, and recruiting judges are all important. One of the primary needs will be to separate legitimate calls for judicial accountability from political and partisan attacks on independence.
• Rethinking of approaches to security	During the past forty years the American law enforcement system made efforts to eliminate racial or ethnic bias in enforcement. Attempts to measure and eliminate "racial profiling" represented just the most recent steps along this path. The terror attacks of 9/11/2001 and subsequent discussions about policy related to national security are challenging conventional wisdom about profiling.	As of June 2002, it appears that Justice Department and Homeland Security intelligence gathering and enforcement policies will in the near future allow for, perhaps even call for, limited racial and ethnic profiling.	*On the Horizon* As profiling occurs, if it does, challenges will be made. In addition, other arenas of law enforcement will likely experience confusing signals, which may be sorted out in the courts. In the atmosphere of the War on Terrorism, questions of racial and ethnic profiling and bias will pervade the criminal justice system, further complicated by federal government refusals to accord some suspects the rights commonly recognized as elements of due process.

POLITICAL & GOVERNMENT TRENDS

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[10] Roger Hanson, "The Changing Role of a Judge and Its Implications," *Court Review* (Winter 2002), at 10, 14-15.

[11] Center for Judicial Independence, American Judicature Society.

CULTURAL TRENDS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Emergence of the cultural creatives[12]	Based on a decade of research, Ray and Sherry identify three primary American cultural types, traditionalist, moderns, and cultural creatives. The former two groups are declining, the latter growing in size, now about 26% of the U.S. population, at 50 million people, more than the population of France. They have these characteristics: (a) love nature, (b) aware of the problems of the whole planet, (c) would pay more to clean up the environment and stop global warming, (d) value relationships, (e) value helping other people, (f) volunteer, (g) care intensely about psychological or spiritual development, (h) see spirituality and religion as important in life, are also concerned about the role of the religious right in politics, (h) want more equality for women at work and want more women leaders in business and politics, (i) are concerned about violence and the abuse of women and children, (j) want politics and government to emphasize children's well-being, rebuilding neighborhoods and communities, and creation of an ecologically sustainable future, (k) are unhappy with both left and right in politics, (l) tend to be optimistic about the future and distrust the cynical and pessimistic view offered by the media, (m) want to be involved in creating a new and better way of life, (n) are concerned about what big corporations are doing, (o) have finances and spending under control, (p) dislike modern emphasis on success, (q) like people and places that are exotic and foreign.	If the view that cultural creatives are the growing segment of society, then we will in the coming decade or two see emphasis on traditional religion, an interest in the traditional values of women regarding children, education, family, and relationships, with a matching emphasis on women in positions of power, an emphasis on the search for wholeness, wellness, and community, and a reorientation of the environmental movement from being against pollution and for new forms of industry.	*On the Horizon* For the justice system, the potential impact of the cultural creatives should not be underestimated. Impacts are likely to include less emphasis on litigation, increased interest in community mediation, increased interest in ensuring that government demonstrates excellence, social justice and environmental justice, and even concern for future generations.

CULTURAL TRENDS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Polarization of people by class, race, ethnicity, and lifestyle preferences • Alterations in family composition, including declining numbers of traditional families[13]	Less-than-positive cultural trends are also seen, including polarization of people by race, ethnicity, lifestyle, and class. Decline in the number of traditional families (breadwinner, stay-at-home spouse, children) is frequently noted. Social norms and values are in apparent flux.	Increased tension over shifting social norms and values may be expected. Disputes over lifestyles will persist. Economic restructuring may increase the polarity between haves and have-nots. Increased separation of groups into segregated communities, including gated communities, is predicted.	*On the Agenda* Implications for courts include increased attention to class, ethnic, racial, and lifestyle bias, both in performance and composition. There is a need to address tensions between groups, develop good working relationships with other public and private agencies, and provide both public access and public education that takes into account cultural differences, and finally a need to assure that access to justice is fair.

CULTURAL TRENDS

[12] Paul Ray and Sherry Henderson, *Cultural Creatives: How 50 Million People Are Changing the World* (Harmony, 2000).

[13] John Martin & Brenda Wagenknecht-Ivey, "Courts 2010" (report to NCSC for 2002 Court Executive Development Program), p. 4.

ENVIRONMENTAL TRENDS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Shift to eco-economics	The industrial revolution of the last century and a half was enabled by a shift in energy technology to oil and gas, mechanization, and tremendous exploitation of natural resources of all kinds, including clean air, water, and soil, to enable massive production and increases in wealth. Though the spreading of industrialization and wealth has been uneven globally, both its benefits and its pollution are relatively obvious. Now, signs increasingly appear that this revolution is near its end: for example, an international conference held in May 2002 found that global supplies of oil will peak in 2010 and then start to decline. About 50 countries, including the U.S., have already passed their peak.	The next 25 years will see both the imperative for and the probable emergence of an eco-economy. This economy will be organized around new energy technologies, just as the industrial revolution was. The most likely source is hydrogen; thus, a forecast for a shift to a hydrogen economy. Already in 2002, the auto industry, which two years earlier spoke of hydrogen-based fuel cell cars as though they were science fiction, now speaks as though the shift away from the internal combustion engine and to fuel cells is inevitable and approaching sooner rather than later.	*Over the Horizon* Higher and more volatile energy prices are likely to accompany the transition period to an eco-economy. An acceleration of innovation, patents, intellectual property issues, as well as real property issues, will ensue. Business formations and dissolutions will accelerate. Environmental disputes will increase.
• Global warming[14]	It is generally accepted within the scientific community that the planet is warming. The role that human activity plays in the warming remains more controversial.	The planetary climate will warm over the next several decades, resulting in sea-level increases of some unknown magnitude.	*Over the Horizon* Confirmation of global warming is likely to take 7-10 years at least. However, if warming remains the trend and sea levels continue to rise, lawsuits will eventually appear in which coastal property owners, including nations, will sue (for reparations and mitigation) those seen as major contributors to global warming because of industrial activity for a century or more, namely, the U.S.
• Environmental issues color virtually all public decisions	Conflict over the environment constitutes a growing arena for public dispute, including citizen vs. government and government vs. citizen, business law, and even private civil actions. As someone noted, it is difficult to build even a sidewalk without an argument over the environmental impact. On a large scale, the National Environmental Policy Act (NEPA) along with the endangered species protection act generates many disputes at the local and state levels. There is a desire to reduce the court-clogging effect of these often complex disputes by using ADR methods.	Environmental disputes are almost certain to increase in number. These will include criminal cases revolving around environmental terrorism.	*On the Agenda* Caseloads for environmental disputes will continue to increase, as will the need to understand complex environmental sciences. Criminal cases involving eco-terrorism will test the definition of terrorism and whether actions such as freeing mink from a mink farm or burning a forest research station may be defined as terrorism. Alternative dispute resolution for environmental issues is being encouraged by the Congress and by the states.

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Glen Hiemstra, "A New Mission for Humanity," Futurist.com (March 2002).

[14] Brenda Cooper, "Global Warming," Futurist.com (January 2002).

U.S. Institute for Environmental Conflict Resolution

GLOBAL TRENDS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Globalization of commerce • Globalization of crime and justice • Terrorism	While a globalized economy is not exactly new in human history, its extent and reach today is very great. With global travel, global communications, and global scientific research and development has come the globalization of crime, and an increased search for global justice institutions and approaches. What is particularly new in this age, however, is the reach of the "Super-empowered Angry Men," as Friedman calls them. With the reach of global communication and transportation, and the amplifying power of modern computers and modern weapons has come the ability of individuals or very small groups to reach across national borders and wreak tremendous damage. This has not existed before.	Globalization appears to be a powerful and continuing force. Boundaries are likely to continue to become more permeable, even while border security is tightened. The integration of global business, and world humanity, is likely to intensify. Tremendous pressures to rethink the entire global labor market will increase as those nations which lead the age wave, namely, most of the industrialized world, begin to see labor markets and then whole populations shrink.	*On the Horizon* Warren concludes as follows: "It can be argued that during the next decades, globalization will impact no governmental institution more than the courts." Courts will need to "develop trustworthy, orderly, and efficient ways to resolve conflict at local community levels and among the nations of the world." Courts will need to "create flexible training modules, abandon rigid assumptions, and learn from the experiences of people in other nations, . . . in order to deal with the increasingly complex range of disputes likely to arise in the [21st] century."[15]

GLOBAL TRENDS

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[15] Christie S. Warren, "Court Administration as a Tool for Judicial Reform: An International Perspective," Institute for Court Management, Court Executive Development Program, Phase III Project (April 2001).

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COURT ENTERPRISE DOMAINS

TRIAL COURT PERFORMANCE TRENDS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Increasing demand for culturally appropriate court and justice services • An increasing number of diverse expectations for the courts' role in society • Increasing demand for justice system performance accountability • Court and justice system mission creep	Two performance standards, access to justice and equality, fairness, and integrity in the justice system, are particularly challenged by the demographic character of American immigration. Immigration today, as high as it has ever been, is weighted toward Latino, Asian, and Middle Eastern populations. Central and Eastern Europeans and Africans also continue to immigrate.	Given continued growth in population diversity, the near-term future will bring increased demands for culturally appropriate court and justice services. These demands and needs will vary by locality, depending on the makeup of local populations and political values. System-wide communication among courts will be challenged by local and regional differences in approach to access, language facilitation, etc. The trend toward developing specialized courts may extend in some areas to the development of courts for Hispanic or other racial/ethnic groups. The current practice in a few courts of offering forms and other documents in multiple languages will become common practice in most state courts. Community courts will increase in number, particularly in large metropolitan areas.	*On the Agenda* Courts are challenged as perhaps never before to provide both access and equity to differing language and cultural groups, in terms more appropriate to those groups. This means increased demands for language and cultural interpreters, increased need for dispute resolution methods that accommodate both economic and cultural differences, dealing with particular crime within ethnic communities, such as gang disputes, increased need and opportunity to diversify the workforce and juries, and increased need to educate the workforce about cultural issues. There are also increased time pressures because cases move slowly, and increased need and opportunity to involve new parts of the community in judicial matters and support of the courts. Courts will increasingly emphasize multilingual and multicultural backgrounds among hiring criteria. Foreign language interpreters will be a growing presence. Cultural education for judges and court staff will become mandatory.
• Challenges to judicial independence	Judicial independence is being challenged in a variety of ways in 2002, most particularly by the continuing trend to politicize judicial issues, appointments, and elections with a focus on a single issue or point of view.	There is no end in sight to the drift toward politicized courts and judicial positions. Political battles over court appointments, judicial elections focused on single issues, and the like are most likely to increase rather than decrease. This seems especially likely given the moral and value judgments inherent in the looming biotechnology, life sciences, and privacy issues. The growing cost of judicial election campaigns will expose	*On the Agenda* Players in the judicial system need to constantly assess how they can maintain independence through individual and collective strategies.

TRIAL COURT PERFORMANCE TRENDS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
		judicial candidates to greater pressure from special interests. The independence of judicial decision making will be more in question. More judges will be subject to disciplinary and impeachment proceedings. More states will call for "reforms" of judicial codes of conduct and disciplinary processes. More states will tinker with judicial selection processes in the name of "reform."	
• Development of multi-door courthouse	The "multi-door" courthouse was first proposed in 1976, and has become a common but not universal practice. The concept is that instead of adding all cases to the litigation docket, disputants are directed to "intake specialists" who determine the optimal routes to resolution. Those routes may include assistance from community resource centers, mediation, arbitration, minitrial, summary jury trial, or litigation, among others.	The multi-door courthouse concept will increase in application, including certain uses of the Web portal as one of the doors.	*On the Agenda* To achieve access, expedition, fairness, and public trust, courts should explore multi-door approaches in cooperation with other agencies and stakeholders in the justice system.

TRIAL COURT PERFORMANCE TRENDS

The five core performance areas around which the Trial Court Performance Standards are organized are:

- Access to justice
- Expedition and timeliness
- Equality, fairness, integrity
- Independence, accountability
- Public trust and confidence

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CRIMINAL JUSTICE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Probable slowing of ten-year decline in crime	Beginning in the early 1990s, crime rates, particularly for violent crimes, began an annual 6-8% decline. Explanations centered on demographics, hand gun controls, shifts in the drug culture, and increased incarceration. This decline slowed to tenths of a percent in the past 12-24 months.	While many factors influence crime rates, two factors on the horizon, economic dislocations and a shift to a larger youth population with the coming of age of generation Y, suggest that the drop in crime rates may come to an end over the next 3-7 years. This traditional demographic expectation ought to be tempered, however, with the notation that the 1990s' decline in crime occurred among juveniles as well as adults, thus raising questions about the inevitability of an increase.	*On the Horizon* The unprecedented and dramatic declines in crime rates of 1993-1999 are not likely to be sustained through the next decade, putting added caseload pressure on courts.
• Additions to the court mission, including increased reliance on therapeutic approaches to court and justice service provision • Increasing demand for justice system accountability	Although crime rate statistics showed leveling if not decreasing trends during the 1990s, the current economic malaise, combined with the coming of age of the Gen-Y Echo-Boomers, may have reversed downward trends. Faced with what could be rising criminal caseloads, the courts, particularly specialized ones that require more time per case for intensive judicial supervision and involvement with offenders, are challenged to avoid backlogs.	The intensive nature of problem-solving courts such as drug courts is likely to create an even greater demand for specialists (for scientific expertise, education, referrals, etc.) within the justice system if such courts continue to increase in number. Effective management skills and systems integration will be in even greater demand. Referrals are likely to be an issue for specialized courts—to faith-based organizations, treatment, etc. Even if long-term performance demonstrates a reduction in recidivism, short-term pressures may jeopardize funding and interagency cooperation that are essential to the effectiveness of problem-solving courts. Success by the specialized courts in handling the upcoming pressures may justify a revolution in the approach to all traditional adjudication models in this country.	*On the Agenda* Specialized proceedings such as those in drug courts will raise ethical questions for judges, lawyers, and treatment staff because the deviation from traditional adjudication and its familiar standards for due process and professional conduct (such as in the increased chances for *ex parte* communications) will raise potential pitfalls for the unwary. The intensive involvement of participants in problem-solving courts will raise overall expectations for the justice system. Consequently, the long-term success or failure of these efforts is likely to have a magnified effect on public trust and confidence in the justice system. Politics and attendant *funding* prioritization will have a significant impact on special programs affiliated with the justice system. Accountability and communication of successes will be important factors for the popularity and continuation of justice initiatives.

CRIMINAL JUSTICE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Identify theft a growing concern, part of larger privacy issue	Identity theft is a common crime today. The growing range of personal information that may be learned and recorded electronically and the multiplying uses of and means to access such information continues to fuel conflicting demands regarding what information should be public and what private.	"Your identity, in whatever form it takes, will increasingly have value and therefore be a target for crime. Identity crimes may be facilitated either by counterfeit identifiers or the misuse of legitimate identifiers."[16] Crimes related to identity theft and "misuse" of personal information will proliferate in state and federal law while government and anti-crime interests will lobby for greater access to information by which to track sex offenders, potential terrorists, and other suspect individuals and groups. Courts will be faced more frequently with questions related not only to the accuracy of scientific and technological means for gathering and using personal information but also with the balance of rights and interests surrounding such science and technology.	*On the Agenda* New legislation pending at state and federal levels. Procedural and technical safeguards (not only to handle questions of access and privacy but also to protect against alteration or destruction) for records and other information that courts maintain online will increase in importance. With public awareness of and sensitivity to questions of personal information growing in a society that is ever more "connected," the effectiveness with which courts handle questions regarding privacy and public access will have significant impact on public trust and confidence in the courts and government as a whole.

CRIMINAL JUSTICE

[16] "Crime Prevention," *Foresight* (1999-2002).

"Perspectives on Crime and Justice: 2000-2001 Lecture Series," National Criminal Justice Reference Service.

CIVIL JUSTICE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Civil cases migrate toward private justice	Civil cases continue to grow in volume, as the U.S. maintains its reputation as a litigious society. But these civil cases are migrating away from the traditional courts and into an emerging system of private justice. The private justice system includes alternative dispute resolution, and tends to be available to better educated and wealthier litigants.	Private courts will continue to grow in use and the economic disparity between those who turn to private justice and those who cannot for economic reasons will widen.	*On the Agenda* The shift of civil actions to private forums is a serious challenge to the courts. Revenues are lost. Equity is compromised as poor litigants are not included in the private system. Judges lose the variety afforded by civil cases, and are left with the relative sameness of criminal cases. Diversion of significant civil cases from the courts inhibits the development of the law via legal precedents.
• Efforts to limit liability and alter jurisdictions • Increased internationalization of disputes		Acting in response to pressure from business interests, the federal government will attempt to limit liability and damages in various types of civil litigation. To do this, the federal government will seek to remove certain types of litigation from state court jurisdiction, much as it has extended federal criminal jurisdiction into areas traditionally reserved to the states. As international trade increases (e.g., through agreements like NAFTA) and more litigants have not merely interstate but international presences, state courts may find themselves with jurisdiction over more disputes requiring the application of unfamiliar laws, such as the U.N. Convention on Contracts of the International Sale of Goods, instead of the more familiar Uniform Commercial Code. At the same time, special trade tribunals may challenge or disregard the authority of state courts.	*On the Agenda* Pressures for special courts devoted to business disputes, both domestic and international, will increase. Increased state-level involvement in international issues would influence already increasing demands for foreign language interpreters, cultural awareness, and flexibility in legal representation. The ability of federal courts to handle increasing volumes of international litigation will affect the degree to which state courts are pressured in this context.

CIVIL JUSTICE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Possible backlash against arbitration as alternative to courts	Studies are indicating that arbitration is actually far more expensive for consumers and employees who seek redress for discrimination, fraud, and malpractice. In fact, arbitration costs are so high that many people drop their complaints because they can't afford to pursue them.	Public backlash against contractual language that essentially inhibits access to justice by mandating costly and possibly biased arbitration processes.	*On the Horizon* The courts will be encouraged to develop or expand their own arbitration programs, particularly to ensure neutrality of the arbiters. Court decisions will increasingly strike down mandatory arbitration provisions in contracts, essentially for being contrary to public policy.

CIVIL JUSTICE

Chief Justice Richard Guy (ret.), Washington State, private correspondence, 2002.

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JUVENILE & FAMILY JUSTICE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Restorative justice gaining worldwide attention	Restorative justice is central to the Hawaii Judiciary. It is defined as "a balanced approach that requires the Justice to devote attention to the victim, the offender and the community as active participants in the criminal justice system."[17]	Restorative justice is gaining in worldwide attention, interest, and acceptance, particularly when applied in family law cases where a systemic approach is paramount. The acceptance of restorative justice principles will increase, justifying efforts to increase coordination among justice and social service agencies.	*On the Agenda* In jurisdictions around the country, indeed the world, and where not being applied, restorative justice could be subject to study and use. Currently decentralized coordination efforts will become more centralized although no single hierarchical model may emerge for the coordinating authority. Coordination will be assisted by developments of "people-based" information systems that allow for identification/recognition of events/issues related to entire families, not based upon isolated case numbers tied to events/issues.
• Juvenile crime rates falling across many categories of crime • "Get tough" approaches to juvenile crime compete with restorative justice approaches	The decline in crime rates has been steady for a decade, but may be leveling.	The large "echo-boom" generation (Generation Y) will contribute to an increase in instances of criminal activity among teenagers and young adults. Political pressure, generated by subjective fears, media sensationalism, and interests of the prison-industrial complex, will result in continuation of get-tough approaches in some states, where even more minors will be charged as adults for criminal offenses. Criminal justice costs will rise at the expense of higher education and social programs. Whether youthful offenders are treated as juveniles or adults, courts, jails, and correctional facilities will have to decide how to accommodate the influx of youth; even for those charged as adults, there is likely to be some recognition of their age. International pressure and media coverage will contribute to changes in public attitudes about the death penalty, ultimately resulting in its prohibition for those who commit offenses before the age of 18.	*On the Horizon* States in which restorative justice is most strongly embraced will resist reflexive get-tough approaches and concentrate on objective performance data, most importantly rates of overall crime, recidivism, and long-term costs. Aided by greater interagency coordination and innovative methods for handling juvenile and family cases, these states will emphasize preventive efforts such as early intervention programs. Performance measures will reinforce the demands for program accountability. Prevention efforts will extend to strategies for handling gangs. Programs that are culturally attuned will attempt to sensitize youth and redirect aggressive behavior.

JUVENILE & FAMILY JUSTICE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
		The struggling economy, coupled with the rise in youth population, will test the effectiveness of welfare reform efforts of the 1990s. Government, faith-based, and other programs aimed at alleviating poverty, improving job readiness, and reducing other social ills will influence the downstream incidences of domestic violence and juvenile delinquency. Youth and teen courts will help in handling increases in cases involving juvenile offenders. The accountability of such programs and their integration and coordination with existing elements of the justice system will be important factors in their success.	

JUVENILE & FAMILY JUSTICE

[17] Michael A. Town, "The Unified Family Court: Preventive, Therapeutic and Restorative Justice for America's Families," National Center for Preventive Law, California Western School of Law (Spring 2001).

"Juvenile Offenders and Victims, National Report Series," U.S. DOJ (December 2001).

SCIENCE & TECHNOLOGY IN COURT	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Science and technology issues are of increasing dominance in court cases • Additional moratoriums on capital punishment due to controversy over DNA evidence	It is obvious that science and technology issues are of increasing importance in court. Judges have begun to work more closely with scientists to ensure that rulings are based on sound science. Differing historical principals govern science and law. Adversarial court proceedings and cooperative scientific inquiry clash as means to find truth. The Federal Judicial Center cooperates with the National Academy of Sciences in their Program in Science, Technology and Law.	Judicial decisions about scientific and technological matters, and decisions influenced by science and technology will increase in frequency, particularly with relation to bio and life sciences and information technology. Courts will have to decide the reliability of new biometrical methods for identifying individuals (DNA, retinal and iris scans, etc.) and determine the comparable stature of long-accepted though more questionable means of identification (e.g., fingerprints, police lineups, etc.). Such advances in identification will be particularly important in handling death penalty cases. Convicts currently on death row request that crime scene and other biological evidence be subjected to advanced testing methods that were not available at the time of their arrests, convictions, and sentencing. Courts with significant scientific demands—both in operations and in case subject matter—will hire or retain the services of their own scientific experts/advisors. The increasing use of DNA evidence will lead to higher standards for the long-term storage and protection of records and evidence. Whether the courts or another justice agency will bear the responsibility and cost for this function will have to be resolved to satisfy legal demands related to chains of possession as well as practical demands re. what entity is in the best position to perform the function. The *Daubert* decision will be significantly modified or reversed.	*On the Agenda* Judges, and particularly appellate judges, will increasingly be expected to be conversant in issues of science and technology. Since deep-level expertise will be impossible across a range of subjects and disciplines, closer cooperation between the judicial and scientific communities will be increasingly needed. To this end the establishment of recognized scientific panels is important, as is education in local jurisdictions regarding their existence, availability, and uses. States must weigh claims of actual innocence (and the implication that the guilty party may still be free) against the need for finality in court processes and limits on expenses. Questions regarding the reliability of long-accepted means of identification could potentially lead to the reopening of thousands of cases. Changes in justice system policies will improve PT&C for courts among minority groups but is likely to shake the confidence of the majority of Americans in the short term. Courts will have to decide the reliability of new biometrical methods for identifying individuals (DNA, retinal and iris scans, etc.) and determine the comparable stature of long-accepted though more questionable means of identification (e.g., fingerprints, police lineups, etc.). More judicial education will be mandated for handling science and technology issues.

SCIENCE & TECHNOLOGY IN COURT

Stephen Bryer, "Science in the Courtroom," *Issues in Science and Technology Online* (Summer 2000).

Donald Kennedy & Richard Merrill, "Science and the Law," *Issues in Science and Technology Online* (Summer 2000).

The National Academies Science, Technology and Law Program.

COURT MANAGEMENT DOMAINS

JURIES	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Jury reform	The U.S adversarial system is so well accepted that less than vigorous application of adversarial norms is considered a breach of duty. But the system can leave amateur jurors confused and befuddled. Jury service, along with voting, is one of the fundamental means for public participation in government. For most members of the public, it provides the primary window into the system of justice in this country. New York and other jurisdictions have used efforts to improve jury service as a means to improve public trust and confidence in the justice system. Improvements in parking and day care, source lists that draw upon wider/more diverse citizen pools, emphasis on recognizing the importance of citizen service on juries, and better efforts to inform prospective jurors of what to expect all improve juror satisfaction with the service experience.	As they become a greater share of all cases, technically complex cases will further challenge the average jury to understand and decide the case, particularly with no change in current practices. Significant efforts to open the jury process are likely to continue, most notably in the area of jury deliberations. Likely developments from such efforts are increased media coverage, particularly by TV, and sensationalism of cases and processes within the courts. There is a risk that such coverage will trivialize the process or influence the dynamics of jury deliberations. Will this compromise the rights of litigants, especially of defendants in criminal cases? Will this openness compromise jurors' privacy interests? Will jurors and other trial participants attempt to use more open processes as platforms for securing their 15 minutes of fame?	*On the Horizon* Several reforms for jury empowerment and improvement are recommended, including better juror orientation, enabling juries to take notes and ask questions, provision of a built-in laptop computer for each jury position, enabling multimedia access to testimony, allowing more information to reach the jury, fewer professional exemptions in jury selection along with limited term of service and more pay, lay and professional judges sitting together in "mixed juries." Courts must be aware of the potential digital divide when planning to use electronic means such as the Internet to assemble jury lists, call veniremen, or inform citizens about their jury service.

JURIES

Franklin Strier (Prof. of Law, California State U-Dominguez Hills), *Reconstructing Justice: An Agenda for Trial Reform* (Quorum Books/Greenwood, 1994). Abstracted in Michael Marien, *Future Survey* (April 1995).

PERSONNEL WORKFORCE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• A growing shortage of court administrators and staff	According to Martin and Wagenknecht-Ivey, analyses of several court staff tenure trends suggest that middle and senior management ranks in the courts are aging, an observation that mirrors many public agencies. At the same time a shortage of qualified entry-level workers is a common experience.	Generational turnover in court management staff looms over the next decade, while the pool of potential successor employees shrinks and courts face competition for them in the public and private sector.	*On the Horizon* Implications include the need to proactively recruit noncourt, management-educated personnel, improve staff training capacity, and increased demand for a technologically skilled workforce.
• Demands of cultural diversity		Cultural education for judges and court staff will become mandatory. Courts will increasingly emphasize multilingual and multicultural backgrounds among hiring criteria. Foreign language interpreters will be a growing presence.	
• Demands for scientific and technical literacy		Courts with significant scientific demands—both in operations and in case subject matter—will hire or retain the services of their own scientific experts/advisors. More frequent and substantive interaction will be required between court staff and the scientific community in order to handle issues related to the storage and security of records and the validity of "expertise" and scientific testimony.	

PERSONNEL, WORKFORCE

John Martin & Brenda Wagenknecht-Ivey, "Courts 2010" (report to NCSC for 2002 Court Executive Development Program).

BUDGET	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Budget shortfalls at local and state levels	Most state and local governments are experiencing budget problems as a result of the current recession. Courts are sharing in budget cuts although their short-term pain is likely to be less than those for other social and criminal justice agencies. More significant to the courts may be the long-term effects of government cuts to programs serving families and those receiving treatment for substance abuse.	States are seeking federal help and a few are proposing tax increases but neither approach to avoid budget woes is expected to succeed. More states are expected to cut budgets. Given federal priorities and prevailing political philosophy in the current national administration, state and local budgets can be anticipated to stay in deficit until the economy rebounds. In the short term, the current recession will provoke increased pressure, particularly from local government constituencies, upon state governments to increase the state share of funding for the trial courts, accelerating an existing trend. State court constituencies will apply greater pressure to the federal government for monetary support (as in recent efforts to save SJI), but such funding will not come without strings.	*On the Agenda* Courts will join other state and local government agencies in coping with budget shortfalls, postponed spending, and coping with less. In some counties, justice system demands can push county budgets near bankruptcy. More localities will push for increased state funding of the trial courts. Courts will place greater emphasis on gathering financial information regarding revenues, expenditures, and pass-through accounts as part of larger efforts to measure performance and demonstrate accountability. More courts will explore alternative funding strategies, including private funding for programs within or affiliated with the judiciary. Some courts have already established 501(c)(3) entities to assist in court initiatives; more incorporated entities will serve future courts for lobbying and fund-raising purposes. Such strategies will not be without their ethical concerns as they raise many potential questions related to conflicts of interest.

BUDGET

Council of State Governments, State News online, www.statesnews.org/.

"New National Survey Reports State Budgets Fall $17.5 Billion Short," *NCSC News* (November 22, 2002).

Jason White, "States Still Hoping for Help from Above", Stateline.org (May 29, 2002).

FACILITIES & SECURITY	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Overcrowding of prisons • Slower growth of prison construction • Increases in private, for-profit prisons	Today, the U.S. has about 1.8 million people behind bars (100,000 in federal custody, 1.1 million in state custody, and 600,000 in local jails). The nation's incarceration rate remained at about 110 inmates per 100,000 people for much of this century; it began to climb in the mid-1970s, doubled in the 1980s, and then again in the 1990s. It is now 445 per 100,000 (among adult men, about 1,100 per 100,000). During the past two decades, about a thousand new prisons and jails have been built in the U.S.—yet prisons are more overcrowded. States have turned to private, for-profit prisons in the past decade. Today there are 150 private prisons in 31 states, mostly in the South and West. They have recently come under fire, however, for problems with security and medical treatment.	Prison construction will slow during the coming decade, as competing budget priorities intervene. Prison-building moratorium projects, such as those In New York and California, are likely to grow. Growth in the private prison movement is likely to slow in the coming decade, unless government budget shortfalls and another large increase in prison population combine to push the system toward the privates as the only alternative.	*On the Agenda* Courts will be caught between competing poles of crowded prison facilities and inflexible demands for long sentences. Both generally, as public institutions, and specifically, as the venues for trying suspects, courts will be potential targets for terrorist activity. Courtroom and courthouse security measures will increase.
• Courthouse security concerns, including evidence storage and remote and virtual technologies		Both for practical (interstate and international disputes) and security reasons, more court proceedings will take place by closed circuit and other "virtual" technologies. Concerns that courts themselves may become targets of violence—beyond the existing concerns for individuals within the courts—will lead to greater attention to security in court design and in staffing. Screenings of individuals entering the courthouse will become more frequent and invasive. Courthouse security staff will be faced with their own questions regarding profiling. Particularly as more records are handled electronically and the importance of preserving certain	*On the Agenda* Continual updates to technology and security systems will be the norm.

FACILITIES & SECURITY	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
		types of evidence for future forensic examination (e.g., DNA analysis) increases, courts will have to devote greater attention to where such materials will be stored and how they will be protected against tampering or destruction.	
• Courthouse construction		More community court facilities will be developed, particularly in larger metropolitan areas.	

FACILITIES & SECURITY

Eric Schlosser, "The Prison-Industrial Complex," *The Atlantic Online* (*The Atlantic Monthly*, December 1998), at 51.

www.prisons.com.

National Criminal Justice Reference Service.

"Crime and Courts," Stateline.org: Issues online (2002).

TECHNOLOGY	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Implementation of networked communication systems		Integrated justice systems that link the courts with criminal justice and social services systems at the local, state, and national levels for purposes of sharing information will support efforts to track people in criminal and domestic contexts. Such system developments will improve government efforts to find suspects and witnesses in criminal cases, improving arrest rates and reducing delays. Similarly, such developments will assist in interjurisdictional matters involving protection orders in the context of domestic violence, custody, and support. Lastly, the systems will provide more effective means for exploring the links between the civil justice system (particularly domestic cases) and crime.	
• Implementation of improved information analysis	Caseload analysis and distribution tends to focus on total cases.	Appropriately applied technology will enable parsing of cases into "case events," which are defined as some sort of work on the case in the courthouse.	*On the Agenda* By counting case events rather than cases, court administration might aid in creating efficient and equitable workloads.
• Technology updates to courtrooms		Technological advancements and reductions in technology costs will result in changes in courtrooms and in overall operations with the justice system. Specifically, more of the advanced features found in demonstration projects like Courtroom 21 will be added to courtrooms around the country—initially perhaps to only one courtroom in a larger courthouse, but eventually to most. Such advancements will lead to more "virtual courthouse" proceedings.	

TECHNOLOGY	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Advances in interpretation technology		Advances in interpretation technology will be spurred by demand that outstrips the available supply of certified language interpreters for court proceedings. Some individuals will also perceive automated interpreters as being more consistent and less likely to introduce biases—at least ones that cannot be easily identified—in the interpretation process.	
• Use of virtual courthouse		The increase of global trade and travel will increase the demand for virtual courthouse capabilities that allow at least some if not all participants in litigation (judges, witnesses, attorneys, parties, and even jurors) to participate remotely. Safety concerns will also contribute to increased demand for such capabilities.	

TECHNOLOGY

James McMillan, "Technology Trends and the Practice of Law: An Administrative Perspective," *Technological Forecasting and Social Change* 53, No. 2/3 (June/July 1996), 221-226.

COMMUNITY & CUSTOMER SERVICE	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Manipulation of public opinion about crime and the courts using the mass media • Multi-door courthouse • Bundling of legal and other services • Communicating to a diverse population	With public awareness of and sensitivity to questions of personal information growing in a society that is ever more "connected," the effectiveness with which courts handle questions regarding privacy and public access have significant impact on public trust and confidence in the courts and government as a whole.	The intensive involvement of participants in problem-solving courts will raise overall expectations for the justice system. Consequently, the long-term success or failure of these efforts is likely to have a magnified effect on public trust and confidence in the justice system. Politics and attendant funding prioritization will have a significant impact on special programs affiliated with the justice system. Accountability and communication of successes will be important factors for the popularity and continuation of justice initiatives. Emphasis on improving access to the justice system will result in more and better online services and, where practical, more convenient presences in the community. Courts will follow the lead of jurisdictions that have used efforts to improve jury service as a means to improve public trust and confidence in the justice system. Improvements in parking and day care, source lists that draw upon wider/more diverse citizen pools, emphasis on recognizing the importance of citizen service on juries, and better efforts to inform prospective jurors of what to expect can all improve juror satisfaction with the service experience.	*On the Horizon* In general, courts must become more sophisticated in communicating with their constituents. Both directly, through court public information officers, judges, and other court staff, and indirectly, through national organizations and membership associations, the courts must more effectively communicate their role in government and society and the details of the programs that they operate or seek to establish. Communications and customer service training must receive greater emphasis for staff who must interact with the public on a regular basis, and court will provide more support for these staff in the design and provision of forms, signs, and instructional materials with which to serve the public. As courts emphasize customer service in an effort to improve public trust and confidence, there will be a conscious melding of the multi-door courthouse concept with therapeutic justice and problem-solving approaches. Recognizing that those who become involved in the justice system have different needs and expectations, the courts will take a closer look at how individuals can best be served. The courts cannot and should not try to be all things to everyone; however, they can, working in cooperation with local agencies (public and private), ensure that appropriate internal and alternative processes and programs are available to serve their respective communities.

COMMUNITY & CUSTOMER SERVICE

John Martin & Brenda Wagenknecht-Ivey, "Courts 2010" (report to NCSC for 2002 Court Executive Development Program).

"The Multi-Door Courthouse," Annual Report of the Subordinate Courts, Singapore, 2001.

"How the Public Views Courts," 1999 Washington State Survey compared to 1999 National Survey

ETHICS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Ethical issues of increasing importance and focus	In recent years, judicial election campaigns have become more and more like those for other government offices, with funds raised in partisan campaigns rising steadily and the nature of campaign conduct declining in quality. At the same time, recent federal court decisions have further undermined long-established state restrictions on judicial campaign speech that were intended to preserve judicial integrity by keeping the tenor of judicial campaign speech above that of other political campaigns.	The growing cost of judicial election campaigns will expose judicial candidates to greater pressure from special interests. The independence of judicial decision making will be more in question. States will explore alternative methods for funding judicial campaigns. More judges will be subject to disciplinary and impeachment proceedings. Financial disclosure requirements will be expanded in association with codes of judicial conduct.	*On the Horizon* More states will call for "reforms" of judicial selection processes and associated codes of conduct and disciplinary processes to prevent further deterioration of campaigns and the public's impression of judicial integrity.
	In the past decade there has been a shift in thinking about the roles of courts, from adversarial arenas to problem solvers. The result has been that more attention is focused on courts' educational, moral, and therapeutic roles in upholding the rule of law, defining acceptable behavior, reinforcing fundamental values, regenerating a sense of community, and protecting, guiding, and supporting children, the mentally ill, the disabled, and other parties whose welfare so often depends on court services. A number of specialized, problem-solving courts have been established to address cases involving drug use, DUI, guns, etc.	Any shift in the role of the courts tends to alter the role demanded of the judge in court proceedings. Rules of judicial conduct have evolved in conjunction with the expectations for judges as neutral arbiters in traditional adjudicative forums. The newer problem-solving courts tend to demand more active involvement of the judges in all aspects of cases, including those outside the courtroom. Such involvement may challenge judges' ability to maintain traditional neutrality and strain existing limits for judicial conduct.	Specialized proceedings such as those in drug courts will raise ethical questions for judges, lawyers, and treatment staff because the deviation from traditional adjudication and its familiar standards for due process and professional conduct (such as in the increased chances for *ex parte* communications) will raise potential pitfalls for the unwary. Changes in the roles of courts will require careful study as they have implications for the institution of the judiciary and its place in society and government. With many changes being fueled by federal funds, we must know whether they are the result of conscious policy choices or unconscious reactions to resource availability.[18]

ETHICS	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
	Budgetary shortfalls at the state and local level are forcing courts to reduce expenses and seek ways to increase revenues.	Under financial pressure, courts and legislative bodies will increase court costs and fines and redouble efforts to collect unpaid assessments. Efforts to secure grants from federal agencies and private foundations will increase.	More courts will explore alternative funding strategies, including private funding for programs within or affiliated with the judiciary. Courts will establish or work with existing 501(c)(3) entities to assist in court fund-raising initiatives; more incorporated entities will serve future courts for lobbying and fund-raising purposes. Such strategies will not be without their ethical concerns as they raise many potential questions related to conflicts of interest. Courts must take steps to make clear that support for the courts will not result in special treatment.
	The character of the legal profession is changing, particularly as a result of international trade pressures. Long-established restrictions on multidisciplinary and multi-jurisdictional practice are undergoing change.	Admission to the bar and ethical requirements for lawyers will become more uniform. State controls, customarily exercised under the authority of the state courts, will be eroded by federal and international actions.	State, local, and individual interests and ethical standards will be sacrificed to national and international demands for comparable standards in support of free trade.

ETHICS

Molly McDonough, "Money and the Bench: Ohio Groups Sling Case, Mud in Judicial Election Campaign," *ABA Journal eReport* (November 1, 2002).

David L Hudson, Jr., "Georgia Judicial Candidates Free to Speak: Federal Appeals Court Strikes Campaign Speech Regulations," *ABA Journal eReport* (October 25, 2002).

Journal of Power and Ethics.

American Legal Ethics Library.

"Call to Action: Statement of the National Summit on Improving Judicial Selection" (January 25, 2001).

Symposium on Judicial Campaign Conduct and the First Amendment, Chicago, Illinois (November 9-10, 2001).

Terry Carter, "Footing the Bill for Judicial Campaigns: North Carolina Enacts Law for Public Financing of Judicial Elections," *ABA Journal eReport* (October 18, 2002).

[18] Roger Hanson, "The Changing Role of a Judge and Its Implications," *Court Review*, Winter 2002, at 10, 14-15.

ORGANIZATION VISION & VALUES	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Search for effective vision and planning tools	Between 1980 and 2000 the American criminal justice system grew by more than a factor of 3. It did this without effective strategic planning to manage growth.	While system growth will slow, as has been noted, it is not clear that more effective strategic thinking will take place across the system, though it will in local areas.	*On the Agenda* The need for more effective and coordinated strategic thinking is evident. Also needed is more thinking about appropriate preferred visions and values for the courts and the justice system.
• Growth of scenario planning in public sector	Public agencies are using "scenario planning" as a planning tool, rather than traditional strategic planning.	Public agencies will engage in planning practices that account for the rapid nature of change and allow for flexibility.	*On the Agenda* Administrators will want to learn more about this new approach to planning and how it might be used in the courts.

ORGANIZATION VISION & VALUES

Steven R. Donziger, ed. (Director, NCJC, a project of the National Center on Institutions and Alternatives, Alexandria, Virginia), *The Real War on Crime: The Report of the National Criminal Justice Commission* (Harper Perennial, 1996).

Global Business Network, "Scenarios."

Gil Ringland, *Scenarios in Public Policy* (John Wiley & Sons, 2002).

Gil Ringland, *Scenarios in Business* (John Wiley & Sons, 2002).

Bill Hainer & Glen Hiemstra, *Strategic Leadership: Achieving Your Preferred Future* (Lincoln Global, 2000).

INFORMATION MANAGEMENT	Present Conditions	PROBABLE FUTURE Events, Trends, Developments	Urgency (Event Horizon) & Implications
• Seeking better information	Studies suggest that courts are citing academic literature, including legal scholarship, less than in the past. This suggests a disconnect between courts and academe.	Without intervention, the drift toward a disconnect between the court system and legal and other scholarship will likely continue.	*On the Agenda* A rebuilding of a closer relationship between the justice system, law schools, and other academic disciplines is called for.
• Managing digital data	While progress is being made, the judicial system remains top heavy with paper, with systems that do not communicate, and with piecemeal approaches to computerizing and "informatizing" the world of justice.	Courts and other institutions, both public and private, will continue to struggle with the issue of how best to preserve data. In the short term, electronic records offer advantages in space requirements, search capabilities, and speed of transmission compared to paper records. However, electronic records are subject to degradation from a range of electromagnetic radiation sources and, more significantly, can become virtually inaccessible in less than a generation as their underlying storage technologies become obsolete. Paper, on the other hand, can last hundreds of years and still be perfectly readable. The next 5 years will likely see a more rapid application of digital information technology than any preceding period, despite budget challenges. Generational change will facilitate this as the years go by.	*On the Agenda* Fully digitizing case management, records, and intra- and inter-organization communication will become an increasing priority. Some even argue that more effective information management is critical to survival. In order to manage the growing volume of records, both paper and electronic, institutions will more frequently weigh the option of outsourcing tasks such as data entry and storage. For institutions such as courts that must maintain public records and sensitive information that may not be public, issues of privacy and security (both as to misuse and damage) will interfere with otherwise cost-effective approaches.
• Balancing privacy and access • Concern for information security	The balance of privacy and public access interests is one of the most significant information management issues facing the courts.	Although interest in keeping public records accessible—in fact making them more so by way of electronic tools—will probably triumph over arguments to the contrary, the courts and other branches of government will reexamine the more fundamental question of what information belongs in a public record in the first place. Certain sensitive identifying information, such as Social Security Numbers, will be absent or otherwise rendered unreadable to the public on new records. A greater question will be how to handle older public records; the cost of removing or hiding sensitive information may be prohibitive.	*On the Agenda* Courts will become more sensitive to and sophisticated in protecting records against damage and tampering. Courts will be expected to develop and regularly test their recovery capacities against the prospect of disasters, both natural and intentional. Preservation of records in active and back-up forms will be a central issue.

INFORMATION MANAGEMENT

"Empirical Scholarship Can Assist Both Courts and Lawmakers in Their Decision Making," editorial in *Judicature*, www.ajs.org.

Richard Susskind, *Transforming the Law* (Oxford Press, 2000).

Ten Key Challenges Revealed in the Environmental Scan

1. Attention to the changing makeup of and needs of the public, with responses such as court monitoring and accountability programs, community outreach, empowering juries with better information, and generally seeing citizens as customers.

2. Continued shifts toward alternatives to traditional court, including ADR, the multi-door courthouse, and culturally appropriate dispute resolution.

3. Mission creep regarding the services the courts should provide, especially with regard to restorative justice, families, drug court, and more.

4. Increased use of information technology, in court management, information management, cross-jurisdictional and public communication, and in providing trial information.

5. More cases involving science and technology, either as the subject of the case, or the means for dealing with the subject of the case, necessitating great leaps in scientific and technological knowledge, and the creation of special expert resources.

6. Increased use of private alternatives within the justice system, including private prisons and private courts.

7. Focus on rights of new groups, including alternative life style groups, and future persons.

8. Complex ethical and legal issues looming around the biotechnology and life sciences revolutions.

9. Globalization of everything.

10. Short-term serious budget challenges, longer-term staffing challenges.